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Pages 18869-19050

federal register

Friday
May 23, 1986

Selected Subjects

Administrative Practice and Procedure
Commerce Department

Airmen
Federal Aviation Administration

Animal Drugs
Food and Drug Administration

Authority Delegations (Government Agencies)
Federal Reserve System
Securities and Exchange Commission

Aviation Safety
Federal Aviation Administration

Coal
Land Management Bureau

Equal Access to Justice
Commodity Futures Trading Commission

Fisheries
National Oceanic and Atmospheric Administration

Food Additives
Food and Drug Administration

Grants Administration
Commerce Department

Handicapped
Transportation Department

Marine Safety
Coast Guard

CONTINUED INSIDE

Selected Subjects

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Contents

Federal Register

Vol. 51, No. 100

Friday, May 23, 1986

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5486 ... 18869
5487 ... 18871
5488 ... 18873

7 CFR
70 ... 18875
908 ... 18875
Proposed Rules:
966 ... 18890

12 CFR
226 ... 18876
265 ... 18876

14 CFR
97 ... 18877
Proposed Rules:
67 ... 19040
71 (2 documents) ... 18895, 18896

15 CFR
3 ... 18878
8a ... 18879

16 CFR
Proposed Rules:
13 ... 18897

17 CFR
148 ... 18879
200 ... 18881

21 CFR
74 ... 18882
82 ... 18882
510 ... 18883
556 ... 18883
558 ... 18883

29 CFR
12 ... 18884

30 CFR
Proposed Rules:
75 ... 18899

31 CFR
357 ... 18884

33 CFR
Proposed Rules:
Ch. I ... 18900
95 ... 18902
146 ... 18902
150 ... 18902
173 ... 18902
177 ... 18902

40 CFR
Proposed Rules:
180 ... 18913

43 CFR
3400 ... 18884
3420 ... 18884
3460 ... 18884

45 CFR
205 ... 18888

46 CFR
Proposed Rules:
4 ... 18902
5 ... 18902
35 ... 18902
78 ... 18902
97 ... 18902
109 ... 18902
167 ... 18902
185 ... 18902
196 ... 18902
197 ... 18902

47 CFR
1 ... 18889

49 CFR
27 ... 18994
Proposed Rules:
27 ... 19032
609 ... 19032

50 CFR
Proposed Rules:
651 ... 18913

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

Presidential Documents

Title 3—

The President

Proclamation 5486 of May 21, 1986

Better Hearing and Speech Month, 1986

By the President of the United States of America

A Proclamation

Sounds, whether we produce them or receive them, are an integral part of our lives. Musical sounds bring us a whole range of delight. Much of our knowledge of the world around us we learn through sounds: conversations allow us to gather and convey information, to question and to receive answers; ringing fire alarms warn us to clear a burning building. Sounds—both the ones we hear and the ones we make—help us to understand others and be understood.

More than fifteen million Americans strive daily to surmount the isolation that hearing impairment so often brings. Over ten million Americans endeavor to communicate despite speech disorders. We can help people with communicative disorders fulfill their potential by identifying and removing the man-made obstacles that limit their educational and occupational opportunities. Our efforts will enrich not only their lives, but our own.

Today, in medical institutions across the country, scientists supported by the National Institute of Neurological and Communicative Disorders and Stroke and by numerous voluntary health agencies are carrying out a wide range of research to find better ways to prevent, treat, and cure hearing and speech disorders. Investigators have discovered much about the structure and function of the systems involved in hearing and speech. They have developed new devices and medications that offer hope where before there was none. Still, much remains to be learned.

To heighten public awareness of hearing and speech disorders, the Congress, by Senate Joint Resolution 284, has designated the month of May 1986 as "Better Hearing and Speech Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1986 as Better Hearing and Speech Month, and I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11854
Filed 5-22-86; 11:19 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5487 of May 21, 1986

National Tourism Week, 1986

By the President of the United States of America

A Proclamation

Tourism is vital to the United States. It contributes significantly to our economic prosperity. It creates jobs and helps out on our balance of payments. Most of all, it creates better understanding of this Nation's social and cultural realities, including our history.

People are central to the travel industry. It supports, directly or indirectly, almost 7 million jobs. Travel and tourism have grown substantially over the years. The industry now generates business receipts of approximately $260 billion annually. Payroll income alone is $60 billion, and tax revenue is $33 billion. Indeed, international tourism now ranks as this Nation's largest business "export" in the service industries.

This Nation is blessed with a magnificent and varied array of tourist attractions: our extraordinarily diversified landscape, and some of the world's most vibrant cities, cultural attractions, and natural wonders. Nowhere else but in America can you find such beautiful coastlines and beaches, majestic mountains, lush valleys, rugged woods, rolling plains, awesome canyons, scenic deserts, tropical islands, and Arctic snowscapes. No wonder the world wants to come and see where we live. Let us welcome them and treat them as honored guests.

In recognition of the many educational, economic, and recreational benefits of tourism to the people of this country, the Congress, by Public Law 99–98, has designated the week beginning May 18 through May 24, 1986, as "National Tourism Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 18 through May 24, 1986, as National Tourism Week, and I call upon the people of the United States to observe such week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86–11855
Filed 5–22–86; 11:20 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 5488 of May 21, 1986

Older Americans Melanoma/Skin Cancer Detection and Prevention Week, 1986

By the President of the United States of America

A Proclamation

Skin cancer is the most common form of cancer, and its incidence is rising. Fortunately, it is also the most preventable form of cancer and the easiest to detect early and treat successfully. The risk of developing skin cancer increases throughout adult life, with the highest incidence occurring among people over 50.

There are two basic types of skin cancer: the common basal cell and squamous cell cancers, and the less common but far more serious type called melanoma. More than 400,000 new cases of nonmelanoma skin cancer are diagnosed in the United States each year. These cancers have a high cure rate, especially with early detection and prompt treatment. Most can be treated in the doctor's office.

Occurrence of nonmelanoma skin cancers varies directly with exposure to ultraviolet light from the sun (and "sun lamps" of various kinds), and indirectly with skin pigmentation. Older Americans can reduce their risk of skin cancer by avoiding excessive exposure to sunlight, particularly if they are fair-skinned; by avoiding exposure during the 10 a.m. to 2 p.m. hours; by wearing protective clothing; and by using sunscreen lotions and ointments. Prudent avoidance of too much sunlight is fully compatible with enjoyment of the great outdoors.

Older Americans may mistake the signs of skin cancer for normal skin changes due to aging, and they should be alert to these signs. Many skin growths are noncancerous, but any new growth on the skin, or a sore that does not heal, should promptly be brought to a doctor's attention. Skin cancer has many different appearances, but it occurs most frequently on sun-exposed areas of the body.

Melanoma is a far more serious health problem, but it also is highly curable when detected and treated early. About 23,000 new cases will be diagnosed this year. Melanoma is also related to exposure to ultraviolet light but not as directly as nonmelanoma skin cancers. Older Americans should be alert for changes in the size or color of a mole or rapid darkening, ulceration or scaliness or changes in the shape or outline of a mole, or development of a new pigmented lesion or bulge in a normal skin area. These are some of the most common signs that may signal melanoma, and a doctor should be consulted without delay.

The American Academy of Dermatology and other dermatologic organizations are committed to educating the public about all types of skin cancers. This year marks the Second Annual National Melanoma and Skin Cancer Detection and Prevention Program, a coordinated national effort of professional dermatologic organizations to reduce the increasing incidence of skin cancers and to better control these cancers by prompt diagnosis and appropriate treatment.

The Congress, by Senate Joint Resolution 267, has designated the week of May 26 through June 1, 1986, as "Older Americans Melanoma/Skin Cancer Detection and Prevention Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 26 through June 1, 1986, as Older Americans Melanoma/Skin Cancer Detection and Prevention Week, and I invite all Americans to observe the week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-11856
Filed 5-22-86; 11:21 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

Voluntary Standards and Grades for Poultry

Correction

In FR Doc. 86–10334, beginning on page 17278, in the issue of Friday, May 9, 1986, make the following corrections:

1. On page 17280, in the first column, in the second complete paragraph, fourth line, "no" should read "not".

2. In the next paragraph, in the tenth line from the bottom of the paragraph, "note" should read "not".

3. On page 17281, in the third column, in § 70.221 (e), in the second line, "of" should read "on".

BILLING CODE 1505-01-M

7 CFR Part 908

[Valencia Orange Reg. 364]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 364 establishes the quantity of such fruit that may be shipped to market during the period May 23–29, 1986. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 364 (§ 908.664) is effective for the period May 23–29, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of Valencia oranges are subject to regulation under the marketing order and that the great majority of these handlers may be classified as small entities. While regulations issued may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on May 20, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Oranges, Valencias.

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.664 is added to read as follows:

§ 908.664 Valencia Orange Regulation 364.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 23, 1986, through May 29, 1986, are established as follows:

(a) District 1: 384,000 cartons;

(b) District 2: 416,000 cartons;

(c) District 3: Unlimited cartons.

Dated: May 21, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–11827 Filed 5–22–86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Official Staff Commentary Update

Correction

In FR Doc. 86-6848, beginning on page 11422, in the issue of Thursday, April 3, 1986, make the following correction:

On page 11425, in the third column, following the ninth line, insert the following phrase: "Items which are not penalties include, for example:"

BILLING CODE 1505-01

12 CFR Part 265

[Docket No. R-0573]

Rules Regarding Delegation of Authority; Delegation of Authority to Secretary of the Board To Act on Certain Applications Requiring Prior Approval of the Board

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority, 12 CFR Part 265, to delegate to the Secretary of the Board the authority to act on certain membership applications requiring prior approval of the Board. The amendment authorizes the Secretary to take action on a membership application when a Reserve Bank could take action on the application under delegated authority but a director or senior officer of any holding company, bank, or company involved in the transaction is a director of the Federal Reserve Bank or branch. It is expected that this delegation of authority will expedite processing of membership applications when such an interlock exists.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Richard F. Fabrizio, Senior Financial Analyst (202/452-3423), Domestic Applications Section, Division of Banking Supervision and Regulation; John Harry Jorgenson, Senior Attorney (202/452-3778), Legal Division; or for users of Telecommunications Device for the Deaf (TDD) Earnestine Hill or Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 9 of the Federal Reserve Act (12 U.S.C. 321, et seq.) provides that state-chartered banks may make application to the Board, under such rules and regulations as the Board may prescribe, for approval to beome a member of the Federal Reserve. The Board's Regulation H, Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208), prescribes eligibility requirements (§ 208.2), application requirements (§ 208.4), and matters to be considered by the Board before acting on such an application (§ 208.5). Under § 265.2(f)(28) of the Board's Rules Regarding Delegation of Authority (12 CFR Part 265), Reserve Banks have delegated authority to approve applications for membership provided specified criteria are met.

Section 265.2(a)(2) of the Board's Rules Regarding Delegation of Authority provides that the Secretary of the Board, rather than the Reserve Bank, may act on a bank holding company application that otherwise meets the criteria for delegated action unless a director or senior officer of a holding company, bank, or other company involved in the transaction is also a director of a Federal Reserve Bank or branch. The Rules, however, do not contain a similar provision applicable to membership applications that could be delegated. The Board is amending § 265.2(a)(2) to provide that the Secretary may act on membership applications with such a management interlock in the same manner as bank holding company applications with such an interlock may be delegated.

The amendment to the Board's Delegation Rules would expedite and simplify processing of membership applications and would decrease the number of cases considered directly by the Board that do not present significant issues, while ensuring that cases involving Reserve Bank management interlocks are not acted upon exclusively by the Reserve Bank.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No 96-354, 5 U.S.C. 601 et seq.), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

Public Comment

The provisons of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date, have not been followed in connection with the adoption of this amendment because the change affects the Board's internal procedures and practices and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority, delegations (Government agencies), Banks, Banking, Federal Reserve System.

PART 265—[AMENDED]

Pursuant to its authority under sections 9(l) and 11(j) AND (k) of the Federal Reserve Act (12 U.S.C. 321, 248(j), and 248(k)) to exercise general supervision over Reserve Banks and to delegate functions to members and employees of the Board and to the Reserve Banks, the Board amends its Rules Regarding Delegation of Authority (12 CFR Part 265) as follows:

1. The authority citation for Part 265 its revised to read as follows:

Authority: Section 11(k); 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2 is amended by revising paragraph (a)(2) as follows:

§ 265.2 Specific Functions Delegated to Board Employees and to Federal Reserve Banks.

(a) * * *

(2) Under the provisons of sections 18(c) and 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c) and 1828(c)(4), sections 3(a), 4(c)(8), and 4(c)(14) of the Bank Holding Company Act (12 U.S.C. 1842(a), 1843(c)(8), and 1843(c)(14)), sections 5(a), 5(b), and 7(d) of the Bank Service Corporation Act (12 U.S.C. 1865(a), 1865(b), and 1867(d)), the Change in Bank Control Act (12 U.S.C. 1817(j)), and sections 9, 25, and 25(a) of the Federal Reserve Act (12 U.S.C. 321 et seq., 601-604a, and 611 et seq.), and § 225.14, 225.23, and 225.41-43 of Regulation Y (12 CFR 225.14, 225.23, and 225.41-43), and sections 211.3(a), 211.4(c), 211.5(c), and 211.34 of Regulation K (12 CFR 211.3(a), 211.4(c), 211.5(c), and 211.34), to furnish reports on competitive factors involved in a bank merger to the Comptroller of the Currency and the Federal Deposit Insurance Corporation and to take actions the Reserve Bank could take except for the fact that the Reserve Bank may not act because a director or senior officer of any holding company, bank, or company involved in the transaction is a director of a Federal Reserve Bank or branch.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 19, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-11611 Filed 5-22-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24994; Amdt. No. 1321]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number. This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on May 16, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, amd 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB-DME; § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective 31 July 1986*

Hawthorne, CA—Hawthorne Muni, VOR RWY 25, Amdt. 14
Hawthorne, CA—Hawthorne Muni, LOC RWY 25, Amdt. 7
Benton Harbor, MI—Ross Field-Twin Cities, LOC BC RWY 9, Amdt. 8
Kent, OH—Kent State Univ, VOR-A, Amdt. 11
Kent, OH—Kent State Univ, NDB RWY 1, Amdt. 10
Youngstown, OH—Youngstown Executive, VOR RWY 11, Amdt. 4
Youngstown, OH—Youngstown Executive, VOR/DME-A, Amdt. 8
Ardmore, OK—Ardmore Downtown Executive, RNAV RWY 17, Amdt. 3
Ardmore, OK—Ardmore Downtown Executive, RNAV RWY 35, Amdt. 3
Big Spring, TX—Big Spring McMahon-Wrinkle, VOR RWY 17, Amdt. 4
Big Spring, TX—Big Spring McMahon-Wrinkle, VOR RWY 35, Amdt. 4
Dallas, TX—Dallas-Love Field, ILS RWY 13R, Orig.
El Campo, TX—El Campo Metro Airport, Inc, VOR/DME RWY 35, Amdt. 3
Gainsville, TX—Gainsville Muni, NDB RWY 17, Amdt. 4
Houston, TX—Houston Intercontinental, ILS RWY 32R, Amdt. 8
Houston, TX—William P. Hobby, ILS RWY 4, Amdt. 34

. . . *Effective 3 July 1986*

Alabaster, AL—Shelby County, VOR-A, Amdt. 5
Gadsden, AL—Gadsden Muni, NDB RWY 6, Amdt. 9, CANCELLED
Jasper, AL—Walker County-Bevill Field, VOR/DME-A, Amdt. 2
Tuscaloosa, AL—Tuscaloosa Muni, VOR RWY 4, Amdt. 9
Tuscaloosa, AL—Tuscaloosa Muni, VOR RWY 22, Amdt. 10
Tuscaloosa, AL—Tuscaloosa Muni, NDB RWY 4, Amdt. 7
Tuscaloosa, AL—Tuscaloosa Muni, ILS RWY 4, Amdt. 9
Farewell, AK—Farewell, NDB-A, Orig., CANCELLED
Grass Valley, CA—Nevada County Air Park, VOR-A, Amdt. 2, CANCELLED
Grass Valley, CA—Nevada County Air Park, VOR RWY 7, Orig.
Lincoln, CA—Lincoln Muni, VOR RWY 15, Amdt. 2
Marysville, CA—Yuba County, VOR RWY 14, Amdt. 8
Marysville, CA—Yuba County, VOR RWY 32, Amdt. 9
Marysville, CA—Yuba County, NDB RWY 14, Amdt. 2
Marysville, CA—Yuba County, ILS RWY 14, Amdt. 3
Oroville, CA—Oroville Muni, VOR-A, Amdt. 4
Denver, CO—Centennial, NDB RWY 35R, Amdt. 7
Daytona Beach, FL—Daytona Beach Regional, VOR RWY 34, Amdt. 3, CANCELLED
Jacksonville, FL—Jacksonville INTL, NDB RWY 7, Amdt. 8
Jacksonville, FL—Jacksonville INTL, ILS RWY 7, Amdt. 9
Lake City, FL—Lake City Muni, VOR/DME-A, Amdt. 3
Venice, FL—Venice Muni, VOR/DME-A, Amdt. 3
Winter Haven, FL—Winter Haven's Gilbert, VOR/DME-A, Amdt. 4
Atlanta, GA—DeKalb-Peachtree, ILS RWY 20L, Amdt. 5
Homerville, GA—Homerville, VOR/DME-A, Amdt. 3
Homerville, GA—Homerville, NDB RWY 14, Amdt. 1
Rome, GA—Richard B. Russell, VOR/DME RWY 18, Amdt. 4
Rome, GA—Richard B. Russell, VOR/DME RWY 36, Amdt. 5
Rome, GA—Richard B. Russell, NDB-A, Amdt. 3
Boise, ID—Boise Air Terminal (Gowen Field), VOR RWY 10R, Amdt. 19, CANCELLED
Boise, ID—Boise Air Terminal (Gowen Field), VOR RWY 10R, Orig.
Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME RWY 10R, Amdt. 5, CANCELLED
Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME RWY 10R, Orig.
Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME or TACAN RWY 28L, Amdt. 8, CANCELLED
Boise, ID—Boise Air Terminal (Gowen Field), VOR/DME or TACAN RWY 28L, Orig.
Boise, ID—Boise Air Terminal (Gowen Field), LOC/DME BC RWY 28L, Amdt. 4
Boise, ID—Boise Air Terminal (Gowen Field), NDB RWY 10R, Amdt. 26
Boise, ID—Boise Air Terminal (Gowen Field), ILS RWY 10R, Amdt. 6
Caldwell, ID—Caldwell Industrial, NDB RWY 30, Amdt. 1
Mountain Home, ID—Mountain Home Muni, NDB RWY 28, Amdt. 1
Nampa, ID—Nampa Muni, NDB RWY 11, Amdt. 1
Bloomington-Normal, IL—Bloomington-Normal, VOR RWY 11, Amdt. 9
Bloomington-Normal, IL—Bloomington-Normal, LOC BC RWY 11, Amdt. 6
Jacksonville, FL—Jacksonville Muni, VOR RWY 13, Amdt. 6, CANCELLED
Jacksonville, FL—Jacksonville Muni, VOR RWY 13, Orig.
Paxton, IL—Paxton, VOR RWY 18, Orig.
Evansville, IN—Evansville Dress Regional, NDB RWY 18, Amdt. 1, CANCELLED
Evansville, IN—Evansville Dress Regional, NDB RWY 36, Amdt. 1, CANCELLED
Storm Lake, IA—Storm Lake Muni, NDB RWY 35, Amdt. 3, CANCELLED
Wichita, KS—Cessna Acft Field, RNAV RWY 17L, Orig., CANCELLED
Wichita, KS—Cessna Acft Field, RNAV RWY 35R, Orig., CANCELLED
Albert Lea, MN—Alberta Lea Muni, VOR RWY 16, Amdt. 7
Albert Lea, MN—Alberta Lea Muni, VOR/DME RWY 34, Orig.
Hibbing, MN—Chisholm-Hibbing, VOR RWY 13, Amdt. 11
Hibbing, MN—Chisholm-Hibbing, VOR RWY 31, Amdt. 15
Lakeville, MN—Airlake, VOR-A, Amdt. 2
Lakeville, MN—Airlake, ILS RWY 29, Orig.
Lakeville, MN—Airlake, RNAV RWY 29, Amdt. 2
Warroad, MN—Warrod Intl-Swede Carlson Field, NDB RWY 31, Amdt. 3
Warroad, MN—Warrod Intl-Swede Carlson Field, RNAV RWY 31, Orig.
Louisville, MS—Louisville Winston County, NDB RWY 17, Amdt. 2
Winner, SD—Bob Wiley Field, VOR-A, Amdt. 5
Carthage, TX—Panola County-Sharp Field, VOR/DME-A, Amdt. 3, CANCELLED
Collage Station, TX—Easterwood Field, NDB RWY 34, Amdt. 7
Collage Station, TX—Easterwood Field, ILS RWY 34, Amdt. 7
Longview, TX—Gregg County, VOR/DME or TACAN RWY 35, Amdt. 5, CANCELLED

. . . *Effective 12 May 1986*

Warrensburg, MO—Skyhaven, VOR RWY 13, Amdt. 3
Dayton, OH—James M. Cox Dayton Intl, ILS RWY 24L, Amdt. 5

. . . *Effective 8 May 1986*

Fort Wayne, IN—Fort Wayne Muni (Baer Fld), RADAR-1, Amdt. 20
Alexandria, MN—Chandler Field, VOR RWY 22, Amdt. 13

. . . *Effective 1 May 1986*

Troy, AL—Troy Muni, NDB RWY 7, Amdt. 6

[FR Doc. 86-11601 Filed 5-22-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 3

[Docket No. 60232-6032]

Rules of Procedure for Handling Contract Appeals

AGENCY: Office of the Secretary, Commerce.

ACTION: Revocation.

SUMMARY: The Appeals Board for the Department of Commerce was abolished on October 14, 1980 and its functions relating to adjudications under the Contract Disputes Act of 1978, 41 U.S.C. 601-613, are now being performed by the General Services Administration Board of Contract Appeals pursuant to interagency agreement. This Notice revokes 15 CFR Part 3, which contains

procedures governing contract appeals of the abolished Appeals Board.

DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce H. Segal, Attorney-Advisor; Office of the Assistant General Counsel for Finance and Litigation, Herbert C. Hoover Building, Room 5893, Washington, DC 20230, Telephone (202) 377–1122.

SUPPLEMENTARY INFORMATION: 15 CFR Part 3 prescribed procedures governing contract appeals to the Appeals Board for the Department of Commerce. The procedure applied to decisions of contracting officers arising under contracts which contained provisions requiring the determination of appeals by the Secretary of Commerce or his duly authorized representative or board. The Appeals Board, established under 40 FR 17771 (1975), was abolished on October 14, 1980 (See Revocation Notice of Department Organization Order 20–11). The contract appeals functions are now performed by the General Services Administration Board of Contract Appeals, which has its own procedures governing the adjudication of contact disputes. In addition, the Part 3 procedures are obsolete because they do not conform to current dispute resolution requirements of the Contract Disputes Act of 1978. This notice revokes Part 3.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required and no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Section 553 of the Administrative Procedure Act does not require that notice and an opportunity for comment be given for this rule because it is a rule of agency procedure (5 U.S.C. 553(b)(A)). Since notice and opportunity for comment are not required under section 553 of the Administrative Procedure Act (5 U.S.C. 553) and since no other law requires that notice and an opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this notice revokes a procedural rule rather than a substantive rule, under section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), the revocation may be made effective immediately.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 3

Administrative practice and procedure, Government procurement.

Under the authority of the Secretary of Commerce contained in 5 U.S.C. 301, and Department Organization Order 10–5, as amended August 27, 1984, 15 CFR Part 3 is hereby revoked and reserved.

Dated: May 14, 1986.

Katherine M. Bulow,

Assistant Secretary for Administration.

[FR Doc. 86–11615 Filed 5–22–86; 8:45 am]

BILLING CODE 3510–17–M

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15 CFR Part 8a

[Docket No. 50695–6066]

Audit Requirements for State and Local Governments

AGENCY: Department of Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms as a final rule the interim rule relating to audit requirements for state and local governments.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. McNamara, U.S. Department of Commerce, Office of Finance and Federal Assistance, 14th and Constitution Avenue, NW., Rm: 6204, Washington, DC 20230, Telephone No: (202) 377–5817.

SUPPLEMENTARY INFORMATION: On July 26, 1985, the Department of Commerce issued an interim rule known as Audit Requirements for State and Local Governments (50 FR 30418). The primary purpose of that interim rule was to implement the requirements for auditing State and local governments as required by the Single Audit Act of 1984, Pub. L. 98–502. The Act established audit requirements for State and local governments that receive Federal aid and defines Federal responsibilities for implementing and monitoring those requirements.

The interim rule invited written comments, however, none were received; therefore, this notice makes the interim rule final. As stated in the interim notice, this regulation is not a major rule as defined in Executive Order 12291.

Paperwork Reduction Act

This rule contains a collection of information for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 2507). The collection of this information has been approved by the Office of Management and Budget under control number 0607–0518.

Lists of Subjects in 15 CFR Part 8a

Grants program, Grants administration, Loan programs, Intergovernmental relations.

Accordingly, the interim regulation establishing 15 CFR Part 8a which was published July 26, 1985 (50 FR 30418) is adopted as final without changes.

Dated: May 16, 1986.

Sonya G. Stewart,

Director, Office of Finance and Federal Assistance, U.S. Department of Commerce.

[FR Doc 86–11625 Filed 5–22–86; 8:45 am]

BILLING CODE 3510–FE–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 148

Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its rules governing the Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission. These amendments will conform the rules to the Equal Access to Justice Act, as recently amended by the Equal Access to Justice Act Amendments, and will make certain minor clarifying changes.

EFFECTIVE DATE: The revisions shall take effect on June 23, 1986.

FOR FURTHER INFORMATION CONTACT: James T. Kelly, Assistant Chief, Opinions Section, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–7110.

SUPPLEMENTARY INFORMATION: The Commission recently proposed

amendments to its procedural rules to govern the processing of applications under the Equal Access to Justice Act ("EAJ") Act, Pub. L. No. 96–481, 94 Stat. 2325, as amended by the Equal Access to Justice Act Amendments, Pub. L. No. 99–80, 99 Stat. 183. *See* 5 U.S.C. 504 and 28 U.S.C. 2412. *See also* 51 FR 6262 (Feb. 21, 1986, reprinted in [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,923 and codified in 17 CFR Part 148. In addition, the Commission consulted with the Administrative Conference of the United States about the proposed changes. No comments were filed in response to the Federal Register notice of proposed rulemaking and the Commission has decided to adopt the proposed rules without modification.

The Commission notes that the provisions of the Regulatory Flexibility Act do not apply to these rule modifications. The rules are procedural in nature and have a potential beneficial, rather than adverse, impact on small businesses. Accordingly, the Chairman, on behalf of the Commission, certifies that the rules adopted in this notice will not have a significant economic impact on a substantial number of small entities. Moreover, the provisions of the Paperwork Reduction Act do not apply to these rule modifications. The rules do not call for the collection of information from the general public by the Commission, but simply implement statutory changes in the context of particular adjudicatory proceedings.

List of Subjects in 17 CFR Part 148

Claims, Equal access to Justice, Lawyers.

PART 148—[AMENDED]

The Commission amends Part 148 of Chapter I of Title 17 of the Code of Federal Regulations, as specified below:

1. The authority citation for 17 CFR Part 148 is revised to read as follows:

Authority: Equal Access to Justice Act, 5 U.S.C. 504(c)(1) and sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5).

Subpart A—General Provisions

2. Section 148.1 is revised as follows:

§ 148.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing private parties in adjudicatory proceedings before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this Part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

3. Section 148.2 is revised as follows:

§ 148.2 When the Act applies.

The Act applies to any covered adjudicatory proceeding pending before the Commission on or after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date. Awards may be sought for fees and other expenses incurred before October 1, 1981, in any such covered proceeding.

4. Section 148.3, paragraphs (a) and (b), are revised as follows:

§ 148.3 Proceedings covered.

(a) The Act applies to adjudicatory proceedings conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Reparation proceedings under section 14 of the Commodity Exchange Act, 7 U.S.C. 18, Commission review of exchange disciplinary and access denial actions under section 8c of the Commodity Exchange Act, 7 U.S.C. 12c, and registered futures association disciplinary and membership denial actions under section 17 of the Commodity Exchange Act, 7 U.S.C. 21, are not covered by the Act. Proceedings brought to determine whether or not to grant or renew registrations pursuant to sections 8a or 17(*o*), of the Commodity Exchange Act, 7 U.S.C. 8, 12a and 21(*o*), or contract market designations pursuant to section 6 of the Commodity Exchange Act, 7 U.S.C. 8, are excluded, but proceedings brought to suspend or revoke registrations or contract market designations are covered if they are otherwise adjudicatory proceedings. For the Commission, the types of proceedings generally covered are adjudicatory proceedings as defined in § 10.2(b) of this Chapter; Part 14 proceedings, if they involve a hearing, are also covered.

(b) The Commission's decision not to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in the proceedings on the application.

5. Section 148.4 is amended by changing the dollar amounts in paragraphs (b) (1) and (2) to read "$2 million", and "$7 million", respectively, and by revising paragraphs (b)(5) and (e) to read as follows. Paragraph (b) introductory text is shown for user convenience only.

§ 148.4 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

* * * * *

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

* * * * *

(e) The employees of an applicant include all persons who regularly perform services for compensation for the applicant, under the applicant's direction and control. The term "employee" also embraces all the agents of an applicant, by whatever title or label they may be known, for whose acts or omissions the applicant may be held liable under the Commodity Exchange Act. *See* 7 U.S.C. 4. Part-time employees shall be included on a proportional basis.

* * * * *

6. Section 148.5, paragraph (a), is revised as follows:

§ 148.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adjudicatory proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Commission was substantially justified. The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the Commission upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Commission.

* * * * *

Subpart B—Information Required From Applicants

7. Section 148.11, paragraph (a) and the introductory text of paragraph (b), are revised as follows:

§ 148.11 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adjudicatory proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agency that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

* * * * *

Subpart C—Procedures for Considering Applications

* * * * *

8. Section 148.26, paragraph (a), is revised as follows:

§ 148.26 Further Proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Commission or for another relevant agency, or on his or her own initiative, the Presiding Officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the Commission was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought. No discovery and/or evidentiary proceedings shall be permitted into the question of whether the agency's position was substantially justified.

* * * * *

9. Section 148.28 is revised as follows:

§ 148.28 Appeal to the Commission.

(a) Either the applicant or counsel for the Commission or for another relevant agency may appeal the initial decision on the fee application by complying with the requirements of this section. An appealing party shall serve upon opposing parties and shall file with the Proceedings Clerk a notice of appeal within fifteen (15) days after service of the initial decision. The notice need consist only of a brief statement indicating the filing party's intent to appeal the initial decision, and shall include the date upon which the initial decision was rendered, the name of the proceeding, and the docket number of the proceeding. The failure of a party timely to file and serve a notice of appeal in accordance with this paragraph, or to perfect the appeal in accordance with paragraph (b) of this section, shall constitute a voluntary waiver of any objection to the initial decision, and of all further administrative or judicial review under these rules and the Equal Access to Justice Act.

(b) An appeal shall be perfected by the appealing party by timely filing with the Proceedings Clerk an appeal brief which meets the requirements of paragraphs (b) and (d) of this section. An original and one copy of the appeal brief shall be filed within thirty (30) days after filing of the notice of appeal. By motion of the appealing party, the Commission may, for good cause shown, extend the time for filing the appeal brief. If the appeal brief is not filed within the time prescribed in this subparagraph, the Commission may, upon its own motion or upon motion by a party, dismiss the appeal, in which event the initial decision shall become the final decision and order of the Commission, effective upon service of the order of dismissal.

(c) The opposing party may, within thirty (30) days after service of the appeal brief, file an original and one copy of an answering brief, and serve one copy thereof, unless the time limit is extended by the Commission upon motion of the party and for good cause shown.

(d) Parties filing an appeal brief or answering brief shall meet the requirements of § 10.12 of this Chapter as to form. The content of briefs shall satisfy the requirements of § 10.102(d) of this Chapter, except that any party, with leave of the Commission, may file an informal document in lieu of a brief. No brief shall exceed thirty-five (35) pages in length without advance leave of the Commission.

(e) On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

Dated: May 19, 1986.

Jean A. Webb,

Secretary to the Commission, Commodity Futures Trading Commission.

[FR Doc. 86-11634 Filed 5-22-86; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 33-6644]

Delegations of Authority to Director of Division of Corporation Finance and Regional Administrators

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its rules relating to general organization to delegate to the Director of the Division of Corporation Finance authority to waive the disqualification provisions of Regulation D under the Securities Act of 1933 (the "Securities Act"). In addition, the Commission is amending the extent of the delegation of authority to its Regional Administrators with respect to confidential treatment applications filed under the Securities Act. The changes will enable the Commission and its staff to process the waiver requests and confidential treatment applications expeditiously and result in savings of time for the Commission and the public.

EFFECTIVE DATE: May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff, (202) 272-2644, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The exemption provided by Rule 505 of Regulation D (17 CFR 230.501—230.506) under the Securities Act governing limited offers and sales of securities not exceeding five million dollars is not available if any persons identified in Rule 252 (c), (d), (e) and (f) of Regulation A (17 CFR 230.251—230.264) are involved in the offering. The Commission may determine not to apply such disqualification provision upon a showing of good cause that under the circumstances the Rule 505 exemption should not be denied.

In order to facilitate the processing of waiver requests under Regulation D, as described above, the Commission is amending its delegation of authority rules to indicate that the Director of the

Division of Corporation Finance may grant such applications under Regulation D by specifically referring to Rule 505.

Rule 242 (17 CFR 230.242) under the Securities Act provided an exemption from the registration provisions of such Act for certain limited offers and sales by qualified issuers. That rule was a predecessor and model for Rule 505 of Regulation D. The Director of the Division of Corporation Finance was given the delegated authority to grant applications for relief from the issuer disqualification provisions of Rule 242. These provisions, as with Rule 505, tie into Regulation A, Rule 252 (c), (d), (e) and (f) (17 CFR 230.252 (c), (d), (e) and (f)) under the Securities Act. In view of the delegation of authority relative to Rule 505 and the removal of Rule 242 (Release No. 33–6389 (March 8, 1982) [47 FR 11251]), it is apparent that the delegation of authority to the Director of the Division of Corporation Finance, relative to Rule 242 may be deleted.

Rule 406 (17 CFR 230.406) under the Securities Act provides a method whereby provisions of material contracts may be accorded confidential treatment where it is shown and the Commission determines that disclosure would impair the contract's value and is not necessary for the protection of investors. Pursuant to delegated authority, both the Director of the Division of Corporation Finance and the Commission's Regional Administrators have the power to grant such applications for confidential treatment (17 CFR 200.30–1(a)(3), 200.30–6(a)(3)). The Director of the Division of Corporation Finance, but not the Regional Administrators, now has the power to deny certain confidential treatment applications or schedule hearings with regard to possible denial of such applications (17 CFR 200.30–1(a)(3)). The Commission finds it to be appropriate that the Regional Administrators have parallel authority to the Director of the Division of Corporation Finance with respect to confidential treatment applications made under the Securities Act.

The Commission also finds, in accordance with section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)) that the foregoing action relates solely to agency organization, procedure or practice, and that such section makes unnecessary the notice and prior publication required by the Act (5 U.S.C. 553). In view of the foregoing, and the expeditious processing which will result in time savings to both the Commission and the public, good cause exists for dispensing with the normal thirty day delay in effectiveness. Accordingly, the amendments to Rules 30–1 and 30–6 are effective immediately.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

Text of Amendment

Accordingly, Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

1. The authority citation for Part 200 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted. § 200.30–1 is also issued under secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; secs. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498–1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 781, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a–37; Pub. L. 87–592, 76 Stat. 394, 15 U.S.C. 78d–1, 78d–2. § 200.30–3 is also issued under secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; c. 122, 59 Stat. 167; Pub. L. 91–565, 84 Stat. 1480; 15 U.S.C. 77c(b), 77s(a) 78d–1, 78n, 80a–37; secs. 2, 17 and 23 thereof (15 U.S.C. 78b, 78q and 78w).

2. Section 200.30–1 is amended by revising paragraph (d) as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) With respect to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and Regulation D thereunder (§ 230.501, et seq. of this chapter), to authorize the granting of applications under Rule 505(b)(2)(iii)(C), (§ 230.505(b)(2)(iii)(C) of this chapter) upon a showing of good cause that it is not necessary under the circumstances that the exemption under Regulation D be denied.

3. Section 200.30–6 is amended by revising paragraph (a)(3) as follows:

§ 200.30–6 Delegation of authority to Regional Administrators.

(a) * * *

(3) To grant applications for confidential treatment of contract provisions pursuant to Rule 406 (§ 230.406 of this chapter) under the Act; to issue orders scheduling hearings on such application and to deny any such application as to which the applicant waives his right to a hearing, provided such applicant is advised of his right to have such denial reviewed by the Commission.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

May 19, 1986.

[FR Doc. 86–11721 Filed 5–22–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 82

[Docket Nos. 83C–0012 and 84C–0426]

Confirmation of Effective Date for D&C Green No. 6 as a Color Additive for Coloring Absorbable Sutures

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 22, 1986, for the final rule that amended the color additive regulations to provided for an increase in the level at which D&C Green No. 6 can be used to color certain polyglycolic acid surgical sutures and to provide for its use for coloring poly(glycolic acid-*co*-trimethylene carbonate) absorable sutures for general surgical use. These actions responded to two petitions filed by American Cyanamid Co.

EFFECTIVE DATE: Effective date confirmed: April 22, 1986.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 1986 (51 FR 9780), FDA amended the color additive regulations to provide for an increase in the level at which D&C Green No. 6 can be used to color certain surgical sutures.

FDA gave interested persons until April 21, 1986, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule

published in the Federal Register of March 21, 1986, should be confirmed.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the March 21, 1986, final rule. Accordingly, the amendments promulgated thereby became effective April 22, 1986.

Dated: May 19, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-11606 Filed 5-22-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from Diagnostic Data, Inc., to DDI Pharmaceuticals, Inc.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: DDI Pharmaceuticals, Inc., formerly Diagnostic Data, Inc., 518 Logue Ave., Mountain View, CA 94043, has filed a supplemental NADA informing FDA of the change in sponsor name for NADA 45-863 (orgotein for injection). The NADA is amended to reflect the change. The regulations in 21 CFR 510.600 are amended accordingly.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by revising the entry for "Diagnostic Data, Inc.," and in paragraph (c)(2) by revising the entry for "024991" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
DDI Pharmaceuticals, Inc., 518 Logue Ave., Mountain View, CA 94043	024991
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
024991	DDI Pharmaceuticals, Inc., 518 Logue Ave., Mountain View, CA 94043.
* * * * *	

Dated: May 16, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-11604 Filed 5-22-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Sulfadimethoxine, Ormetoprim

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for the use of an approved Type A medicated article containing 113.5 grams of sulfadimethoxine and 22.7 grams of ormetoprim per pound to manufacture Type C medicated feed for control of enteric septicemia of catfish caused by *Edwardsiella ictaluri* strains susceptible to sulfadimethoxine and ormetoprim combination.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110, is the sponsor of NADA 125-933 for Romet™ -30 (sulfadimethoxine 113.5 grams (25 percent) and ormetoprim 22.7 grams (5 percent) per pound). The product is a Type A medicated article currently approved for manufacture of a Type C medicated feed intended for control of the bacterial infection furunculosis in salmonids (trout and salmon) caused by *Aeromonas salmonicida*. The supplemental NADA extends use of the product to manufacture a Type C medicated feed intended for control of enteric septicemia of catfish caused by *Edwardsiella ictaluri*. The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. Additionally, the regulations are amended to establish a tolerance for sulfadimethoxine and ormetoprim in catfish.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the

action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. By revising § 556.490 to read as follows:

§ 556.490 Ormetoprim.

A tolerance of 0.1 part per million is established for negligible residues of ormetoprim in the edible tissues of chickens, turkeys, ducks, salmonids, and catfish.

3. Section 556.640 is amended by revising paragraph (a) to read as follows:

§ 556.640 Sulfadimethoxine.

* * * * *

(a) In the uncooked edible tissues of chickens, turkeys, cattle, ducks, salmonids, and catfish at 0.1 part per million (negligible residue).

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

4. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

5. Section 558.575 is amended by adding new paragraph (c)(6) to read as follows:

§ 558.575 Sulfadimethoxine, ormetoprim.

* * * * *

(c) * * *

(6) *Catfish*—(i) *Amount.* 50 milligrams of active ingredients per kilogram of body weight per day.

(ii) *Indications for use.* For control of enteric septicemia of catfish caused by *Edwardsiella ictaluri* strains susceptible to sulfadimethoxine and ormetoprim combination.

(iii) *Limitations.* Administer for 5 consecutive days; withdraw 3 days before slaughter or release as stocker fish.

Dated: May 19, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–11605 Filed 5–22–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

29 CFR Part 12

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs; Correction

AGENCY: Department of Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on relocation assistance and real property acquisition that appeared at page 7012 in the **Federal Register** of Thursday, February 27, 1986, (51 FR 7000). This action is necessary to correct amendatory language in that document.

EFFECTIVE DATE: April 28, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph McGovern, Office of Space and Telecommunications Management, 200 Constitution Avenue, NW., Washington, DC 20210, (FTS or 202) 523–6405.

On page 7012, column two, the fourth paragraph is corrected to read "Title 29 of the Code of Federal Regulations is amended by revising Part 12 to read as set forth at the end of this document."

Signed at Washington, DC, this 16th day of May, 1986.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

[FR Doc. 86–11713 Filed 5–22–86; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

Correction

In FR Doc. 86–11097 beginning on page 18260 in the issue of Friday, May 16, 1986, make the following corrections:

1. On page 18261, in the third column, in *Section 357.26 Payments.* (b), in the fifteenth line, "indemnity" should read "indemnify".

2. On page 18268, in the third column, in § 357.22(b)(2), in the sixth line "law and the terms of the" should read "law of the deceased owner's".

3. On page 18269, in the second column, in § 357.24(c), in the fifth line, "identify" should read "identity".

4. On page 18272, in the second column, in § 357.28(c)(3)(ii)(C), in the first line, "minor" should read "minors"; in § 357.28(d)(1), in the sixth line, "unicorporate" should read "unincorporated".

5. On page 18273, in the second column, in § 357.31(c)(3), in the twelfth line, "upper" should read "under".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3420 and 3460

[Circular No. 2582]

Coal Management—General; Competitive Leasing; and Environment; Amendments Implementing Certain Recommendations of the Commission on Fair Market Value for Federal Coal Leasing and Options Suggested by the Office of Technology Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the Federal coal management regulations to implement certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and policy options suggested by the Office of Technology Assessment. This final rulemaking combines the proposed rulemakings which appeared in the **Federal Register** on November 5, 1984 (49 FR 44221) and on March 5, 1985 (50 FR 10508), respectively. The amendments are designed to improve

the procedures used in leasing Federal coal.

EFFECTIVE DATE: June 23, 1986.

ADDRESS: Any inquiries or suggestions should be sent to: Director (650), Bureau of Land Management, Room 3600, Main Interior Bldg, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Thomas Walker (202) 343–4636
or
Robert C. Bruce (202) 343–8735

SUPPLEMENTARY INFORMATION: This final rulemaking combines two proposed rulemakings that would make amendments to the Federal coal leasing program and reflects the decisions of the Secretary of the Interior of February 21, 1986, on modifications of the coal leasing program. The first proposed rulemaking implemented certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and was published in the **Federal Register** on November 5, 1984 (49 FR 44221) with a 60-day comment period. The comment period was reopened on March 15, 1985, and extended to May 9, 1985, to coincide with the publication of the comment period on the Federal coal management program environmental impact statement supplement. The first proposed rulemaking was sent to State Governors and major interest groups at their request in July 1984. Following this distribution, informational briefings were held in July and December 1984 and January 1985.

The second proposed rulemaking implemented certain policy options suggested by the Office of Technology Assessment and was published in the **Federal Register** on March 15, 1985 (50 FR 10508) with a 30-day comment period, which was later extended to May 9, 1985. This second proposed rulemaking was sent to State Governors and interest groups in November 1984 and was available for comment at the December 1984 and January 1985 informational briefings.

The two proposed rulemakings were the subject of 16 comments, 10 on the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing and 6 on the policy options suggested by the Office of Technology Assessment. The comments came from the following sources: three from energy companies; two from industry trade associations; two from conservation groups; one from a State government; one from a Federal agency; and one from an individual. The comments dealt with three of the recommendations of the Commission on Fair Market Value for Federal Coal Leasing and four on the options suggested by the Office of Technology Assessment and each comment is discussed in connection with the section covered.

No comment opposed the amendment made to § 3400.4 by the proposed rulemaking implementing certain policy options suggested by the Office of Technology Assessment which would make regional coal team recommendations rebuttable presumptions. Two of the comments did, however, state that the public must be allowed sufficient time to comment on all regional coal team meetings and the recommendations made at the meetings and the regional coal team must respond to all public comments. The comments also expressed the view that those making comments should be informed of the action taken on those comments. The instructions provided regional coal teams will emphasize that all regional coal team meetings are public meetings, that a comment period of sufficient length to give the public adequate opportunity to comment on the actions of the regional coal team must be provided and that public comments should be addressed in the recommendations of the regional coal team. The final rulemaking has adopted the change made to § 3400.4 without change. The final rulemaking also changes the language of § 3400.4(d) to bring it into agreement with the Secretary of the Interior's coal program decisions of February 21, 1986.

In connection with the revision made by the proposed rulemaking implementing certain policy options suggested by the Office of Technology Assessment which added § 3400.6, one comment suggested a review of all existing coal management regulations for the purpose of inserting at each point where public comment is required a minimum time period for such comment. The purpose of this comment is answered by the requirement added by § 3400.6 that the minimum period for public comment will be 30 days unless otherwise specified. The final rulemaking has adopted § 3400.6 without change.

The reinstatement of the threshold concept in § 3420.1–4 of the proposed rulemaking, which implemented the policy options of the Office of Technology Assessment, received six comments. The comments argued either that not enough of a change was being proposed or that too much change was being proposed. The comments from the conservation groups wanted to see the threshold levels applied twice, once during land use planning and a second time during the preparation of individual coal lease sale environmental impact statements. On the other hand, comments from industry groups, while supporting environmental protection, expressed the view that the provisions of the existing regulations, if fully implemented, would provide sufficient safeguards for environmental values.

One of the comments on the threshold issue expressed concerns about the overall land use planning and regional leasing process. In a lengthy discussion, the comment expressed the concern that the whole effort of land use and activity planning was to reduce the number of coal-bearing lands available for leasing, with no opportunity for reinstatement of those lands that were perceived to have defects. The comment went on to state that the effect of applying all the coal screens and then the threshold analysis during the land use planning process would be to force decisions that should not be made until the mining permit stage. The comment expressed the view that if a coal lease met all of the regulatory requirements, then a coal lessee should have a guaranteed right of development.

This comment directly relates to the issue of data adequacy, i.e., at what stage are data adequate for the purposes intended. The purpose of applying coal screens and threshold analyses to lands whose resources and other values are being considered during land use planning is to eliminate those coal-bearing lands with significant resource conflicts or those with resources protected by statute or regulation. For instance, surface mining methods could not be used on coal-bearing lands supporting critical habitat for an endangered species of plant or animal. This would be true whether or not the endangered species unsuitability criteria existed, since the critical habitats of endangered species are protected by statute. Leasing those lands for coal development would be useless, since the lessee could not mine the coal in those lands using surface mining methods.

Not all resource conflicts can properly be determined during land use and activity planning. One unsuitability criterion that generally is not applied at the land use planning stage is whether or not the lands being studied are located in an alluvial valley floor chiefly valuable for farming. In addition, the final judgment on whether the lands could be reclaimed to the standards of the Surface Mining Control and Reclamation Act of 1977 is best made at a later point in the process. The Secretary of the Interior determined in

1979 that reclamation feasibility is most efficiently determined at the mine permit stage.

For the reasons set out above, lessees cannot have a guaranteed right of development. Lessees assume certain risks when they obtain a Federal coal lease, or any lease for that matter, and all circumstances which might hinder or prevent coal development cannot be known years before development will occur. However, careful application of coal screens and thresholds during land use planning should minimize the possibility that a coal lease could not be mined because of resource conflicts.

After a careful review of the comments on the amendments made by the proposed rulemaking implementing policy options suggested by the Office of Technology Assessment to § 3420.1–4, the final rulemaking reinstates the threshold concept in the Coal Management regulations. In response to one comment that suggested that the language was ambiguous, the final rulemaking has adopted a clarifying amendment to § 3240.1–4(f).

There were four comments on the amendment to § 3420.3–4(b)(1) made by the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing recommending a change in what was studied in the regional coal leasing environmental impact statements from "preferred alternative" to "proposed action." Three of the comments supported the change, viewing it as merely a change in semantics.

The fourth comment opposed the change on the basis it was contrary to the National Environmental Policy Act of 1969 and its implementing regulations. The comment noted that the designation of a "preferred alternative" by an agency need not indicate to the public that a final decision had been made prematurely. In fact, some of the regional coal leasing environmental impact statements contained explicit language noting that the preferred alternative did not bind the Secretary of the Interior in any way in reaching a final coal leasing decision. Despite these statements, certain groups continued to accuse the Department of the Interior of writing regional coal leasing environmental impact statements that supported already-made decisions. Therefore, the change of wording from "preferred alternative" to "proposed action," while not a comprehensive solution to the public perception problem, was put forward in the proposed rulemaking as a remedy. The change is consistent with the regulations of the Council on Environmental Quality because it is based on Chapter 516 of the Department of the Interior's Manual which implements the Council on Environmental Quality regulations and which was approved by the Council after public review and comment. The final rulemaking has adopted the amendment to § 3420.3–4(b)(1) without change.

Seven comments were directed to the amendment made to § 3422.1(c)(2) by the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing. The Commission recommended changing the basis for calculating minimum bids. The majority of the comments opposed the establishment of minimum bids on a regional basis and the expression of those bids in cents-per-ton. The comments that supported the regional minimum bid concept expressed the view that regional minimum bids made sense and are justified by regional differences in coal quality and quantity. Those that opposed the change argued that intraregional differences may be as great as interregional differences. Those in opposition to the change supported the status quo or the establishment of minimum bids on a tract-by-tract basis. Two of the comments made the point that, if the purpose of minimum bids is to screen out nuisance bids, then elaborate regional minimum bids are unnecessary. Finally, two of the comments were extremely wary of the Department of the Interior's intentions in proposing a minimum bid system on a regional basis, viewing it as an attempt to eliminate minimum bids altogether and to sell Federal coal for less than it is worth.

In an effort to analyze the available options concerning minimum bids for coal, the Department of the Interior studied the development of the concept of minimum bids and the objectives which minimum bids might serve. The study revealed that historically minimum bids, which were initially termed "minimum acceptable bids," have served several purposes. These purposes were not all enunciated at the same time, but became blurred and intermingled as time passed. The purposes are not mutually exclusive, although certain objectives may be better expressed regionally or nationally, in dollars-per-acre or cents-per-ton, or as fees rather than as minimum bids.

Initially, in the offshore oil and gas leasing program, where the concept of minimum bids originated, minimum bids were designed to recover the costs of bringing lease tracts to sale. The July 19, 1979, regulations on Federal Coal Management stated the following objectives for minimum bids for Federal coal lease tracts: to dissuade non-serious bidders from disrupting coal lease sales; to recover the costs of bringing Federal coal lease tracts to offering at Federal coal lease sales; and to set a floor below which Federal coal would not be leased.

After careful consideration of the comments and of the objectives to be served by minimum bids, the final rulemaking retains a minimum bid of at least $100 per acre or its equivalent in cents-per-ton and allows the minimum bid to be expressed either regionally or nationally. The minimum bid may be set at more than $100 per acre in a region when analyses by a regional coal team indicates that a higher amount is appropriate. The minimum bid is not intended to represent fair market value for any tract. Fair market value is not established until after the sale is held.

Five comments were directed to the elimination of the requirement to announce the amounts bid at Federal coal lease sales made in the proposed rulemaking implementing certain recommendations of the Commission on Fair Market Value for Federal Coal Leasing. Two of the comments expressed support for the change without further comment; three opposed the change, with two of those comments strongly opposing it.

The change was made in response to two situations, one being when there is a lease sale in which both multiple-bid and single-bid tracts occurred and the other when intertract bidding is used as the bidding method.

In sales where there were both multiple-bid and single-bid tracts, the Commission on Fair Market Value for Federal Coal Leasing expressed the view that bids received on multiple-bid tracts would be an important information source for the sale panel in determining whether or not the single-bids constituted fair market value for those tracts. Withholding the amounts bid on single-bid tracts from the sale panel was suggested as a means of not unduly influencing its fair market value determinations. Sequestering the sale panel for the length of the post-sale review was suggested as a means of witholding these amounts. Because such sequestering is impractical, opening the bids but delaying bid announcements on single-bid tracts was then suggested as a means of implementing this recommendation of the Commission.

The second situation involves intertract bidding. One of the principles of intertract bidding is that not all coal lease tracts offered through intertract

bidding will be leased. Some tracts for which bids would be received would not be leased. If these bids represented the bidder's best estimate of the value of the tract, revealing the bid amounts might provide the bidder's competitors with valuable information about the bidder's financial situation and position in the industry in the area. In this case, the bid amount would be protected from disclosure under the provisions of the Freedom of Information Act.

Those comments opposing this change expressed the view that the public had a right to know all amounts bid and would file requests under the Freedom of Information Act to obtain the amounts. These comments termed the change a "gag rule" and feared the change would create the possibility of collusion between the personnel of the Department of the Interior and the bidders.

This proposed change was specifically discussed and was the subject of strenuous objections at the January 1985 informational briefing. It was pointed out in that briefing that the Commission on Fair Market Value for Federal Coal Leasing did not discuss or consider the change in any of its meetings. Further, the Commission's report mentioned it only briefly and did not strongly emphasize or consider it.

After careful consideration of the comments and a review of the analysis of this issue prepared by the Department of the Interior, the change made by the proposed rulemaking has not been adopted by the final rulemaking, leaving the existing regulation unchanged.

In order to implement the recommendation of the Commission on Fair Market Value Policy for Federal Coal Leasing on withholding bid amounts from the sale panel discussed earlier, the Department of the Interior is currently developing an administrative procedure for a two-stage lease sale process which will not require a regulatory change. If a sale involves several lease tracts and some of them receive multiple bids and the other receive single bids, then only the bids on the multiple tracts would be opened and announced at the first stage of the sale. The single bids would not be opened or announced at that time. The sale panel would use the amounts bid on the tracts receiving multiple bids in a postsale appraisal. The results of the postsale appraisal would then be used to reappraise the single-bid tracts. After this, a second stage of the sale would occur at which the single bids would be opened and announced.

Editorial and grammatical changes as needed have been made.

The principal author of this final rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking should not affect small businesses in the coal mining industry to any greater degree than they should affect all coal mining businesses. Studying "proposed actions" rather than "preferred alternatives" in regional coal leasing environmental impact statements, establishing minimum periods for public comments, making regional coal team recommendations rebuttable presumptions, and allowing public comment on the application of the unsuitability criteria should not affect the number or frequency of small business set-aside coal leases offered for sale at regional coal lease sales. Retaining a minimum bid of at least $100 per acre, whether expressed nationally or regionally or in dollars-per-acre or cents-per-ton, should retain the status quo and not affect small business bidding opportunities at Federal coal lease sales to any greater or lesser extent than those opportunities are now affected.

There are no additional information collection requirements in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3420

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3460

Coal, Environmental protection, Mines, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351—359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–2075), and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.), Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set out below.

May 1, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 3400—[AMENDED]

1. The authority citation for Part 3400 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

2. Section 3400.4 is amended by:

a. Redesignating paragraphs (d), (e) and (f) as paragraphs (e), (f) and (g) respectively; and

b. Adding a new paragraph (d) to read:

* * * * *

§ 3400.4 Federal/state government cooperation.

* * * * *

(d) The regional coal team recommendations on leasing levels under § 3420.2(a)(4) of this title and on regional lease sales under § 3420.3–4(g) shall be accepted except: (1) In the case of an overriding national interest; or (2) in the case the advice of the Governor(s) which is contrary to the recommendations of the regional coal team is accepted pursuant to § 3420.4–3(c) of this title. In cases where the regional coal team's advice is not accepted, a written explanation of the reasons for not accepting the advice shall be provided to the regional coal team and made available for public review.

* * * * *

3. A new § 3400.6 is added to read:

§ 3400.6 Minimum comment period.

Unless otherwise required in group 3400 of this title, a minimum period of 30

days shall be allowed for public review and comment where such review is required for Federal coal management program activities under group 3400 of this title.

PART 3420—[AMENDED]

4. The authority citation for Part 3420 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.).

§ 3420.1–2 [Amended]

5. Section 3420.1–2 is amended by:

a. Revising the heading to read:

§ 3240.1–2 Call for coal resource and other resource information.

b. Amending paragraph (a) by removing the phrase "Call for Coal Resource Information "where it appears and replacing it with the phrase "Call for Coal and Other Resource Information" and by removing the phrase "coal resource development potential" where it appears and replacing it with the phrase "coal resource development potential and on other resources which may be affected by coal development";

c. Amending paragraph (b) by removing the phrase "Call for Coal Resource Information" where it appears and replacing it with the phrase "Call for Coal and Other Resource Information"; and

d. Amending paragraph (c) by removing the phrase "Call for Coal Resource Information" in the two places it appears and replacing it with the phrase "Call for Coal and Other Resource Information".

§ 3420.1–4 [Amended]

6. Section 3420.1–4 is amended by adding a new paragraph (f) to read:

* * * * *

(f) In its review of cumulative impacts of coal development, the regional coal team shall consider any threshold analysis performed during land-use planning as required by § 1610.4–4 of this title and shall apply this analysis, where appropriate, to the region as a whole.

§ 3420.1–8 [Amended]

7. Section 3420.1–8 is amended by:

a. Adding the figure "(a)" at the beginning of the existing text; and

b. Adding a new paragraph (b) to read:

* * * * *

(b) Activity planning shall begin with a regional coal team meeting to review market analyses and land-use planning summaries. The market analyses and land-use planning summaries shall be available at least 45 days prior to such meeting.

§ 3420.3–4 [Amended]

8. Section 3420.3–4(b)(1) is amended by inserting after the first sentence of the section the sentence "One combination of tracts within the regional leasing level shall be identified as the proposed action for study in the environmental impact statement." and by removing from the second sentence the phrase "and shall identify the preferred alternative in the environmental impact statement".

9. Section 342.21(c)(2) is revised to read:

§ 3422.1 Fair market value and maximum economic recovery.

* * * * *

(c)(1) * * *

(2) Minimum bids shall be set on a regional basis and may be expressed in either dollars-per-acre or cents-per-ton. In no case shall the minimum bid be less than $100 per acre or its equivalent in cents-per-ton.

§ 3422.1–1 [Removed]

10. Section 3422.1–1 is removed in its entirety.

PART 3460—[AMENDED]

11. The authority citation for Part 3460 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521– 531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

12. Section 3461.3–1(a) is amended by:

a. Redesignating paragraph (a)(2) as paragraph (a)(3); and

b. Adding a new paragraph (a)(2) to read:

(a) * * *

(2) Public comments on the application of the unsuitability criteria shall be solicited by a notice published in the **Federal Register.** This call for comments may be part of the call for public comments on the draft land-use plan or land-use analysis. This notice shall announce the availability of maps and other information describing the results of the application and the application process used.

* * * * *

[FR Doc. 86–11671 Filed 5–22–86; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 205

General Administration of Public Assistance Programs; Federal Financial Participation in the Cost of a Statewide Mechanized Claims Processing and Information Retrieval System in the Aid to Families With Dependent Children Program

Correction

In FR Doc. 86–8419 beginning on page 13001 in the issue of Thursday, April 17, 1986, make the following corrections:

1. On page 13001, in the second column, in the **SUMMARY** paragraph, in the eighth line, "96–264" should read "96–265".

2. On page 13002, in the first column, in the first paragraph, in the fourteenth line, "percent on" should read "percent FFP on".

3. On page 13004, in the second column, in the *Response* paragraph under "*Issue: Annually Updated APD.*", in the second line, "updates" should read "updated" and in the fourth line, "updated" should read "updates".

4. On page 13004, in the third column, in the *Response* paragraph under "*Issue: Facilitation of Integrated Systems.*", in the third line, "or" should read "of".

5. On page 13005, in the second column, in the third complete paragraph, in the twelfth line, "ADP" should read "APD".

6. On page 13006, in the first column, in § 205.35(b), in the definition "*Hardware*", in the first line, "produced" should read "produces".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 79-163]

Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This action corrects errors in Note 3 of § 1.1306, §§ 1.1308(d) and 1.1311(b) in the Report and Order regarding the Amendment of Environmental Rules in Response to New Regulations Issued by the Counsel on Environmental Quality, 51 FR 14999 (April 22, 1986).

FOR FURTHER INFORMATION CONTACT: Holly Kaufman, Office of General Counsel, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

Correction

Released: May 15, 1986.

On April 22, 1986 (51 FR 14999), the Commission published a final rule in this proceeding concerning amendment of environmental rules. This document corrects errors in that final rule.

1. In § 1.1306, Note 3 is correctly added to read as follows:

§ 1.1306 Actions which are Categorically Excluded from Environmental Processing.

* * * * *

Note.—The construction of an antenna tower or supporting structure in an established "antenna farm": (i.e., an area in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm), will be categorically excluded unless *one or more of the antennas to be mounted on the tower or structure are subject to the provisions of § 1.1307(b) and the additional radiofrequency radiation from the antenna(s) on the new tower or structure* would cause human exposure in excess of the applicable health and safety *guidelines* cited in § 1.1307(b).

§ 1.1308 [Corrected]

2. In § 1.1308(d), the reference to the CEQ regulation is corrected to read "40 CFR 1501.4 and 1506.6".

3. Section 1.1311(b) is correctly revised to read as follows:

§ 1.1311 Environmental information to be included in the Environmental Assessment (EA).

* * * * *

(b) The information submitted in the EA shall be factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission or Bureau, after an independent review of the EA, to reach a determination concerning the proposal's environmental impact, if any. The EA shall deal specifically with any feature of the site which has special environmental significance (*e.g.*, wilderness areas, wildlife preserves, natural migration paths for birds and other wildlife, and sites of historic, architectural, or archeological value). In the case of historically significant sites, it shall specify the effect of the facilities on any district, site, building, structure or object listed, or eligible for listing, in the National Register of Historic Places. It shall also detail any substantial change in the character of the land utilized (*e.g.*, deforestation, water diversion, wetland fill, or other extensive change of surface features). In the case of wilderness areas, wildlife preserves, or other like areas, the statement shall discuss the effect of any continuing pattern of human intrusion into the area (*e.g.*, necessitated by the operation and maintenance of the facilities).

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-11482 Filed 5-22-86; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AO-265-A5]

Tomatoes Grown in Florida; Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on a proposed amendment of the marketing agreement and Marketing Order 966 (7 CFR Part 966), covering tomatoes grown in Florida. The proposal would provide authority for production research and promotion including paid advertising, to accept assessments in advance, to borrow money or to accept voluntary contributions, to allow for interchangeable alternates within districts, to limit committee tenure, and to require periodic referenda on the order.

DATE: Written exceptions to this recommended decision must be received by June 9, 1986.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing on proposed rule—Issued December 16, 1985, and published December 20, 1985 (50 FR 51872).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Small businesses. The Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). As stated in the notice of hearing, interested persons were invited to present evidence at a hearing on the probable regulatory and information impact of the proposed rule on small businesses for purposes of the RFA

During the fiscal year ending July 31, 1985, 103 handlers regulated under M.O. 966 handled tomatoes with an estimated crop value of approximately $314.4 million. The average value per handler was approximately $3,052,000. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000) almost all of the handlers of tomatoes would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The proposed amendments to the order include provisions which will provide more frequent opportunity for producer votes, opportunity for broad base representation on the committee, and greater flexibility for the committee in accepting contributions and advance assessments. The proposed amendment to order § 966.48 makes it possible for the committee to fund production research and paid advertising to promote consumer awareness and sales of Florida tomatoes. The present § 966.48 provides for market research and development projects but makes no provision for paid advertising and promotion, and production research. In the past, these activities have been sponsored by the Florida Tomato Exchange—a nonprofit voluntary cooperative association of first handlers of fresh tomatoes produced in Florida. Most handlers regulated under Marketing Order 966 are members of the Exchange. The Exchange establishes and finances projects involving production research, marketing research and development projects, and marketing promotion and paid advertising projects to assist Florida tomato produces and promote the consumption of Florida tomatoes.

Active members of the Tomato Exchange handle a substantial amount of the tomatoes produced in the production area. These handlers pay assessments directly to the Exchange which are used to finance the costs of such projects. The small percentage of handlers who contribute no funds to the Exchange get all of the benefits from the results of these research projects without incurring any of the costs. If authority is added to the marketing order for production research and marketing promotion including paid advertising, all handlers would pay assessments through the existing order assessment provisions to finance such projects. This would result in everyone paying their fair share of the expenses for these research and promotion projects. This action would not impose substantial costs on affected small businesses because a substantial number of small businesses are already voluntarily funding such projects, and research, promotion and advertising projects could be greatly expanded without substantial increases to individual handler costs.

Based on the foregoing, it is hereby determined that this action will not have a significant economic impact on a substantial number of small entities.

The Florida Tomato Committee has requested a mid-June referendum. Growers and handlers in the production area will be shutting down their operations for the current season and leaving the area for the summer. In order to determine producer support for the proposed amendment of M.O. 966, as many producers as possible should be in the area to participate in the referendum. By allowing a 15-day comment period, thus expediting the formal rulemaking process, we may be able to conduct a mid-June referendum.

A comment period of 15 days is provided. A longer period would unnecessarily delay the amendatory process and possibly prevent the proposed changes from being implemented by the industry in time for the beginning of the 1986-87 marketing season.

Preliminary statement. Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of marketing agreement and Order No. 966 regulating the handling of tomatoes grown in Florida and the opportunity to file written exceptions thereto. Copies of this decision may be obtained from Ronald L. Cioffi whose address is listed above.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

On January 14, 1986, a public hearing was held on proposed further amendment of the marketing agreement, as amended, and Order No. 966, as amended. The hearing was held in Orlando, Florida, pursuant to the provisions of the Act and the applicable rules of practice. Notice of this hearing was published in the **Federal Register** on December 20, 1985 (50 FR 51872). The notice of hearing contained a proposal by the Florida Tomato Committee, which operates under the order, to amend the order to authorize production research and promotion including paid advertisting, allow the committee to accept voluntary contributions for research and promotion projects, accept assessments in advance or to borrow money, limit the tenure of committee members and alternates, allow for interchange of alternates within districts at meetings, and provide for periodic referenda. The notice included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, USDA, authorizing it to make any necessary conforming changes.

Material issues: The material issues presented on the record of the hearing are: (1) Whether the committee should be authorized under the order to engage in production research and marketing promotion including paid advertising to promote the marketing, distribution and consumption of tomatoes; (2) whether the committee should be provided the authority to accept assessments in advance or ot borrow money; (3) whether the committee should be provided the authority to accept voluntary contributions for research and promotion projects; (4) whether a limit should be established on the tenure of committee members and alternates; (5) whether the order should allow for interchange of alternates within districts at meeting; (6) whether periodic continuance referenda should be held on the order; and (7) whether certain minor administrative changes and conforming changes should be made to the order.

Findings and conclusions. The findings and conclusions on the material issues, all of which are based on the evidence presented at the hearing and the record thereof, are as follows:

(1) Currently, § 966.48 of the marketing order for Florida tomates provides that the committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. Puruant to this authority, the tomato industry has conducted several market research and development projects to solve some of its marketing problems and expand sales.

The Agricultural Marketing Agreement Act of 1937, the authority for the marketing order, also provides authority for the conduct of production research projects to help producers more efficiently produce tomatoes, and for the conduct of marketing promotion including paid advertising projects to assist, imporve, or promote the marketing, distribution, and consumption of tomatoes. The authority for production research projects was added to the Act in 1970 and the authority for marketing promotion, including paid advertising projects for tomatoes was added in 1971.

The evidence of record is that § 966.48 should be amended to enable the Florida tomato industry to take advantage of these authorities in solving its production and marketing problems. This would enable the tomato industry to engage in any form of research and market development and market promotion including paid advertising.

Testimony indicates that tomatoes compete with many other fresh and processed fruits and vegetables for their space in supermarkets and in smaller retail grocery stores throughout the country. Many of these competing commodities are nationally advertised and promoted. In competition for display space and local advertising, Florida tomatoes have been at a disadvantage since no vehicle has existed to require mandatory assessments for industry-wide advertisement and promotion. The industry has been similarly disadvantaged in solving its production problems.

Testimony at the hearing also revealed that the industry has attempted to solve its production problems and to conduct promotion, including paid advertising, with voluntary programs conducted by the Florida Tomato Exchange. The Exchange is a nonprofit cooperative association composed of first handlers of fresh tomatoes in Florida and is incorporated under Chapter 619, Florida Statutes. The Exchange was incorporated in December 1974 to complement activities of the Florida Tomato Committee. One of the major objectives is to provide collective action with respect to the orderly marketing and distribution of fresh Florida tomatoes.

The financial structure of the Exchange is separate from the Florida Tomato Committee and Exchange members are billed directly for assessments payable to the Exchange. Active members of the Exchange handle a substantial quantity of the volume of tomatoes produced each year from the production area as defined under M.O. 966. Growers and handlers who are not members of the Exchange get all of the benefits from the results of the Exchange's efforts including production research and marketing promotion including paid advertising without incurring any of the costs. Experience has shown that voluntary programs like this have not always been successful in the long run when only part of the industry funds the programs and all of the industry benefits from the program.

The addition of authority to the tomato marketing order for these types of projects and mandatory assessments for industry-wide participation will be more equitable than the voluntary programs. Under the added marketing order authority all handlers will be required to participate in the funding and that should help the industry greatly expand such programs without big increases in the handlers' costs.

As indicated earlier, the tomato industry is faced with several production problems and should have the means of funding such projects to help solve those problems under the marketing order program. Some of the objective of production research would be to help growers develop more efficient methods to lower their costs, and to produce better quality tomatoes and higher yielding varieties.

The ability of the tomato industry to conduct industry-wide promotion programs including paid advertising, should also be of benefit to the industry as a whole. The objective of promotional and advertising programs for tomatoes would be to increase the demand for tomatoes and thereby contribute to improved returns to producers.

The types of advertising and promotion activities which may be required to meet the needs of the Florida tomato industry cannot be foreseen with certainty. Therefore, the authority for the committee to undertake, with the approval of the Secretary, such paid advertising and promotion activities as are authorized by the Act should be broad and flexible.

Proponents stated that public relation and publicity-type activities directed toward food editors would be most practical. This method would be relatively inexpensive but should be effective for disseminating information on the nutritional value of tomatoes, their availability, method of preparation, receipes and serving suggestions.

Testimony also indicates that another effective method of promoting Florida tomatoes would be through merchandising and point of sale material. Many fruit and vegetable organizations employ field service representatives to work with fresh produce merchandisers in major consuming areas where promotional activities are scheduled. Such field service persons for tomatoes could provide a variety of services, including distribution and display of point of sale material and merchandising aids, informing the trade of advertising programs, and helping with special promotions. They could also furnish the committee valuable information on arrival condition of tomatoes and attitudes of the trade and of consumers regarding tomatoes.

Other possibilities noted in the record would be for the committee to tie in with other allied trade factors for use of more expensive advertising media which might be impractical without this cooperative effort.

Many marketing order committees formulate subcommittees to study carefully and plan advertising and research and promotion programs. A subcommittee on production and market research and promotion and paid advertising should be appointed to plan and propose programs to be approved by the Florida Tomato Committee. Such programs would also require approval be the Secretary before being adopted.

If the committee engages the services of a research or advertising agency for performance of a specific program, the progress and such activity will be reviewed and a separate written report submitted at least annually, and the contracting agency is required to maintain record of funds received from the committee and the expenditures made. Copies of such reports should also be furnished to the Secretary.

In addition, the funds to cover the costs of any research, promotion and advertising activities will be obtained from assessments on shipments; the same as for other committee expenses, or, if approved in this proceeding, any voluntary contributions as discussed in material issue (3). Such research, promotion and advertising expenses must be included in the committee's annual budget of expenses, or in amended budgets of expenses, submitted to the Secretary for approved.

Since the Act authorizes production research and advertising and promotion for tomatoes under the Federal marketing order, and since Florida tomato producers have requested that such authority be added to the marketing order, and the record has demonstrated the need for such authority in order to effectuate the declared purpose of the Act, it is concluded that § 966.48, Research and development, of the order should be amended, as hereinafter set forth, to authorize the establishment of production research, marketing research and development projects and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of tomatoes.

(2) The order should be amended, as hereinafter set forth, to authorize the committee to accept the payment of assessments in advance, and to borrow money on a short-term basis to meet current obligations.

There may be time when the committee has insufficient funds at the beginning of a marketing year to enable it to operate. For example, this could occur prior to the collection of sufficient funds to meet the committee's expenses.

Hearing testimony indicates that the shipping season for Florida tomatoes begins is early October and continues until early June. The actual shipping dates will vary slightly from season to season, depending on weather conditons; but historically, tomato shipments leaving the southern part of the production area will be light in October, and early November, and heavier in late Novermber, December, and January. This represents the winter tomato crop. February and March represent a transition period between the winter crop and the spring tomato crop. Thus, shipments in February and March are light, with the majority of the spring crop being harvested in April, May, and June from the northern section of the production area. More than half of the assessment income is collected from March through June. However, bills and projects dealing with production research and marketing promotion including paid advertising will be ongoing throughout the year.

In order to pay financial obligations as they occur, it may be necessary from time to time for the Florida Tomato Committee to accept the payment of the assessments in advance or to borrow money on a short-term basis to meet current obligations.

The proposed borrowing authority does not allow the Florida Tomato Committee to obligate itself now or bind future tomato committees to repay large sums of money over extended periods of time. Borrowing authority will be used sparingly to meet obligations as they occur and allow the committee a season to adjust its reserve needs to meet current obligations. The Committee should rely primarily on assessment funds to meet its obligations. The Secretary of Agriculture must approve the tomato committee's annual budget at the beginning of each season. In authorizing this borrowing authority, the Secretary will assure that extended indebtedness does not occur by requiring the committee to settle all obligations at the end of each marketing order fiscal period. Thus, it is not contemplated that the committee will carry debts forward from one season to another. It is, of course, the responsibility of the committee to adhere to the conditions of this provision. Therefore, the proposed amendment gives the committee authority to accept assessments in advance or to borrow funds on a short-term basis under these conditions.

(3) The order should be amended, as hereinafter set forth, to provide for the receipt of voluntary contributions to be used only for production research projects and market research and development projects and marketing promotion including paid advertising (§ 966.48). Record evidence indicates that research, market development, and marketing promotion including paid advertising projects for Florida tomatoes should directly benefit growers of that commodity and secondarily benefit other groups and businesses whose interests are allied with the production and marketing of tomatoes. These groups frequently desire to make contributions or donations to help defray the costs of such projects. This is particularly true when research projects are designed to evaluate the effectiveness of certain products. Testimony indicates that voluntary contributions could include money, chemical compounds, mulch applications, containers, machinery, equipment, or any other components

used in the production, harvesting, packing, or marketing of fresh market tomatoes. It is important, however, that the committee have complete control over the use of any contributions, and that the acceptance of contributions by the committee not give rise to allegations of discrimination or undue influence. In order to insulate the committee from undue influence, the committee shall not accept contributions from regulated handlers or any persons who could reasonably be assumed to be in a position to benefit from favorable committee action or any person whose contribution would constitute a conflict of interest.

(4) The order should be amended, as hereinafter set forth, to establish a limit of six years on the tenure of committee members and alternates.

The Secretary's 1982 "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for limiting committee tenure of members and alternates. The Department's policy pursuant to the guidelines is that committee members only may serve a total of six consecutive years. The marketing orders for California kiwifruit and California-Arizona navel oranges have been changed to limit the term of office for committee members and alternates in compliance with the guidelines. It is the Department's view that a limit on tenure improves representation on marketing order committees by allowing for different and more contemporary ideas, and will be benefical to the committee's operation. The tomato committee was advised by the Department prior to the initiation of this proceeding that limiting committee members' tenure to six full consecutive terms is required by Departmental policy and that such limitation would better effectuate the proposes of the Act.

The tenure proposal made by the Florida Tomato Committee was to limit tenure to ten years rather than six years. However, during the hearing witnesses who also served as members of the committee testified in opposition to any tenure limitation. There was considerable testimony that it is unnecessary to limit tenure of members and alternates because not everyone is willing to serve on the tomato committee and growers should have the right to nominate and vote for whomever they want to represent them and not be restricted by limiting the number of terms a person can serve.

Although the record contains considerable testimony in opposition to a tenure requirement, the adoption of this position would be inconsistent with established Department guidelines. Furthermore, a six year tenure limitation is not an undue or unreasonable restriction on grower participation in the nomination and selection process. The Department's goal is to encourage and foster to the maximum extent possible broad based participation by all members of the regulated community in the administration of the marketing order. This objective is best met by such a tenure limitation.

Therefore, in accordance with the Secretary's Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders and to effectuate the declared policy of the Act, the order should be ameded to limit tenure of members and alternates to six full consecutive terms. Any member or alternate member becomes ineligible to serve on the committee after having served six full consecutive terms. Such members and alternate members can again become eligible to serve on the committee by not serving on the committee for one full term as either a member or alternate member. For example, if a person serves three full consecutive terms as a member on the committee and then two full consecutive terms as an alternate, that person would only have one additional year of eligibility to serve on the committee as either a member or alternate before becoming ineligible.

The hearing record also indicates that the Secretary should retain the authority to exempt an individual from the tenure limitation if the position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve. Nevertheless, it would seem clear that such an exception would be made only in special and unusual circumstances and should not be expected as a matter of course.

(5) The order should be amended, as hereinafter set forth, to provide authority for interchange of alternates within districts at Florida Tomato Committee meetings. The committee is composed of 12 producer members. Currently there are four producer districts established in the production area. Meetings of the committee are rotated between districts so it is possible for a member or his alternate to travel 200 miles one way to attend a meeting. If both the member and alternate are absent, the possible attendance of voting members is reduced and in some cases it is difficult to assemble eight members or alternates, the necessary members required for a quorum. This amendment would allow an alternate to serve in a voting capacity if both a member and his designated alternate were absent, and he was an alternate from the same district as the absent member and alternate. This action would permit better representation at all Florida Tomato Committee meetings and tend to better effectuate the declared policy of the Act.

(6) The order should be amended, as hereinafter set forth, to require referenda to be held relative to continuance of the order every six years.

Currently the order and the Act provide that the Secretary shall terminate the program if a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market. Since past experience demonstrates that less than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support for termination of an order. Thus, in order to provide a basis for determining whether producers favor continuance of the order, a new paragraph (d) should be added to § 966.84 to authorize continuance referenda. Current paragraph (d) should be redesignated as paragraph (e). The results of such referenda should be based upon the same percentage of support required in section 8c(8) of the Act with respect to voter approval of the issuance of a marketing agreement and order, 7 U.S.C. 608c(8), 608c(19). A vote approving continuation of the order would require approval by two-thirds of the producers voting in the referendum or by producers who have produced two-thirds of the volume of production voted during a representative period.

The Secretary of Agriculture has determined that continuation referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. In the event that the requisite majority of producers, by number or volume of production represented in the referendum, do not approve continuation of an order, the Secretary should consider termination of the order but would not be required to terminate.

In evaluating the merits of termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote of producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the Act

requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order should be announced on or before the last day of the then current fiscal period. This date precedes the beginning of the committee's operation for a new fiscal period and is considered to be an appropriate time to wind down the operations of the order.

The Florida Tomato Committee was advised by the Department prior to the initiation of the proceeding that periodic referenda every six years are consistent with the Secretary's Guidelines and the policy of USDA. The tomato committee proposed an amendment to provide for periodic referenda every 10 years. There was opposition testimony at the hearing which indicated that referenda are expensive, time-consuming, and wasteful. Testimony also suggests that current provisions in the order are adequate to allow the tomato industry to ask for referenda whenever the need arises. Although the record contains considerable testimony in opposition to the period referenda requirement, the adoption of this position is inconsistent with Department guidelines. The Secretary's 1982 "Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity periodically to indicate their support for or rejection of the order. It is the position of the Department that periodic referenda ensure that the program continues to be accountable to the producers and obligates producers to evaluate their program periodically and so involve them more closely in its operations.

It is the Department's policy pursuant to the Secretary's Guidelines of 1982 that periodic referenda be held every six years. The proposed amendment for referenda every ten years is felt to be too great a length of time to insure that the referenda will reflect producer support or opposition in the face of potentially rapid market changes. A referendum every six years will allow producers an opportunity to vote in favor of or in opposition to the order as changes occur in the industry yet will not be wasteful of the committee's resources. For these reasons, the order should be amended to provide for periodic referenda every six years.

(7) In the December 20, 1985, Notice of Hearing, the Department of Agriculture made a proposal to authorize it to make such other changes as may be necessary to make the entire order conform with any amendments that may have resulted from the hearing. None were necessary.

Rulings on briefs of interested persons. The presiding officer at the hearing set March 3, 1986, as the final date for filing briefs with respect to the evidence presented at the hearing and the conclusions which should be drawn therefrom. Within the time prescribed, one substantive brief and many form letter-type briefs were filed. These briefs and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied.

General findings. Upon the basis of the evidence presented at the hearing and the record thereof it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The amended marketing agreement and order, as both are hereby proposed to be further amended, regulate the handling of tomatoes grown in the production area in the same manner as, and are applicable only to persons in the repective classes of industrial and commercial activity specified in the marketing order upon which a hearing has been held;

(3) The amended marketing agreement and order, as both are hereby proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act; and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The amended agreement and order, as both are hereby proposed to be further amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of tomatoes grown in different parts of the production area; and

(5) All handling of tomatoes grown in the production area, as defined in the amended marketing agreement and order, as hereby proposed to be further amended, is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida.

PART 966—[AMENDED]

1. The authority citation for 7 CFR Part 966 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Recommended further amendment of the marketing agreement and order. The following amendment of the said marketing agreement and order is recommeded as the detailed means by which the aforesaid conclusions may be carried out:

Proposal No. 1 *Committee tenure.*

1. Revise § 966.23 to read as follows:

§ 966.23 Term of office.

* * * * *

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified: *Provided,* that from the date this amended section becomes effective, no member or alternate shall serve more than six full consecutive terms without approval of the Secretary.

Proposal No. 2 *Alternate members.*

2. Section 966.322 is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b to read as follows:

§ 966.32 Procedure.

* * * * *

(b) If both a member and respective alternate are unable to attend a committee meeting, the committee may designate any other alternate present from the same district to serve in place of the absent member.

* * * * *

Proposal No. 3 *Borrowing money.*

3. Section 966.42 is revised by adding a new paragraph (e) as follows:

§ 966.42 Assessments.

* * * * *

(e) In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, or may borrow money on a short-term

basis not to exceed one full-year coinciding with the existing committee's term of office. The authority of the committee to borrow money may be used only to meet financial obligations as they occur and to allow the committee a season to adjust its reserve funds to meet any additional obligations.

Proposal No. 4 *Accepting gifts.*

4. Add new § 966.45 as follows:

§ 966.45 Contributions.

The committee may accept voluntary contributions but these shall only be used for production research, market research and development and marketing and promotion including paid advertising pursuant to § 966.48. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use. The committee is prohibited from accepting contributions from handlers subject to the order, or any person whose contributions would constitute a conflict of interest.

Proposal No. 5.

5. Revise § 966.48 to read as follows:

§ 966.48 Research and promotion.

The committee may, with the approval of the Secretary, establish, or provide for the establishment of projects including production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve or promote the marketing, distribution and consumption or efficient production of tomatoes. The expense of such projects shall be paid by funds collected pursuant to §§ 966.42 and 966.45. Upon conclusion of each project, but at least annually, the committee shall summarize the program status and accomplishments, to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any project carried out under this section. Also, for each project the contracting party shall be required to maintain records of money received and expenditures and such shall be available to the committee and the Secretary.

Proposal No. 6 *Periodic referenda.*

6. Section 966.84 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) as follows:

§ 966.84 Termination.

* * * * *

(d) The Secretary shall conduct a referendum as soon as practicable beginning on the effective date hereof and every sixth year thereafter, to ascertain whether continuance of this order is favored by tomato producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during as representative period determined by the Secretary, have been engaged in the production for market of tomatoes in the production area: Except that termination of the order shall be effective only if announced on or before the last day of the current fiscal period. In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination and such majority produced more than 50 percent of the tomatoes for market.

* * * * *

Proposal No. 7 *Conforming changes.*

Make such other changes as may be necessary to make the entire order conform with any amendments thereto that may result from this hearing. No such changes were necessary.

Signed at Washington, DC, on May 20, 1986.

James C. Handley,

Administrator.

[FR Doc. 86-11727 Filed 5-22-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ASO-10]

Proposed Alteration of VOR Federal Airway V-512

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke that portion of V-512 which is aligned from Lexington, KY, to Elkins, WV. This airway is not utilized and except for one segment is identical to existing airways.

DATES: Comments must be received on or before July 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86-ASO-10, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Peter DiVenere, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must

identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke that portion of V-512 which is aligned from Lexington, KY, to Elkins, WV, via Newcombe, KY, and Charleston, WV. The airway is not utilized and except for one segment is identical to other existing airways. Revocation will preclude dual numbering and will resolve current boundary as well as air traffic control computer problems being experienced between Charleston and Elkins. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant prepartion of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. V-512—[Amended]

By removing the words "Lexington; Newcombe, KY; Charleston, WV; INT Charleston 083° and Elkins, WV, 228° radials; to Elkins" and by substituting the words "to Lexington."

Issued in Washington, DC, on May 16, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-11600 Filed 5-22-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-16]

Proposed Alteration of VOR Federal Airways; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the alternate airway designations for three Federal Airways in the southeastern United States and renumber those segments with the designators of existing overlapping airways. This action is in concert with the national program to simplify airway designations by eliminating alternate Federal airways.

DATES: Comments must be received on or before July 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWA-16, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the alternate airway designations for VOR Federal Airways V-51W, V-54N, and V-115E. The V-51W segment between Corce, GA, and Hinch Mountain, SC, would be renamed as V-311 by extending V-311 from Corce to Hinch Mountain. The V-54N segment between Texarkana and Little Rock, AR, is identical to the overlapping segment of V-573; therefore, redesignation is not required. The V-54N segment between Muscle Shoals, AL, and Chattanooga, TN, would be revoked. The V-115E

segment between Trust, AL, over Chattanooga, TN, would be redesignated as V–209 by extending V–209 from Vulcan, AL, to Chattanooga, TN, via the track of segment of V–115E which is being revoked. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

§ 71.123 [Amended]

V–51—[Amended]

By removing the words "Hinch Mountain, TN, including a west alternate from the INT Anderson, SC, 274° and Athens 340° radials to Hinch Mountain via INT Anderson 274° and Hinch Mountain 160° radials;" and by substituting the words "Hinch Mountain, TN;"

V–311—[Amended]

By removing the words "From INT Toccoa, GA, 222° and Electric City, SC, 274° radials; Electric City," and by substituting the words "From Hinch Mountain, TN; INT Hinch Mountain 160°T(162°M) and Electric City, SC, 274°T(274°M) radials; Electric City;"

V–54—[Amended]

By removing the words "Little Rock, including a N alternate via INT Texarkana 037° and Hot Springs, AR, 225° radials and Hot Springs;" and by substituting the words "Little Rock;" and also by removing the words "Rocket, AL, including a N alternate via INT Muscle Shoals 067° and Rocket 282° radials; Chattanooga, TN, including alternate;" and by substituting the words "Rocket, AL; Chattanooga, TN;"

V–115—[Amended]

By removing the words "Chattanooga, TN, including an E alternate via INT Vulcan 097° and Gadsden, AL, 233° radials, Gadsden and INT Gadsden 042° and Chattanooga 214° radials;" and by substituting the words "Chattanooga, TN;"

V–209—[Amended]

By removing the words "Vulcan, AL" and by substituting the words "Vulcan, AL, INT Vulcan 097°T(095°M) and Gadsden, AL, 233°T(231°M) radials, Gadsden; and INT Gadsden 042°T(040°M) and Chattanooga, TN, 214°T(213°M) radials; Chattanooga".

Issued in Washington, DC, on May 16, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–11599 Filed 5–22–86; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9178]

Bass Brothers Enterprises, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Fort Worth, Texas, producer of carbon black to obtain prior FTC approval for the acquisition of securities or assets of any company over a certain size in the U.S. carbon black business.

DATE: Comments must be received on or before July 22, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/L–502, Edward F. Glynn, Jr., Washington, DC 20580. (202) 634–6608.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Carbon black, Trade practices.

Before Federal Trade Commission

[Docket No. 9178]

Agreement Containing Consent Order

In the matter of Bass Brothers Enterprises, Inc. et al.

The agreement herein, by and between the corporations Bass Brothers Enterprises, Inc. and Sid Richardson Carbon & Gasoline Co. by their duly authorized officers, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance with those rules the parties hereby agree that:

1. Respondent Bass Brothers Enterprises, Inc. is a corporation organized and existing under the laws of the State of Texas with its corporate headquarters at 2700 First City Bank Tower, 201 Main Street, Fort Worth, Texas.

2. Respondent Sid Richardson Carbon & Gasoline Co. is a corporation organized and existing under the laws of the State of Texas with its corporate headquarters at 2700 First City Bank Tower, 201 Main Street, Fort Worth, Texas.

3. Respondents have been served with copies of the complaint issued by the Federal Trade Commission (the "Commission") charging them, with violation of section 7 of the Clayton Act, as amended (15 U.S.C. 18), and section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and have filed an answer to said complaint denying said charges.

4. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

5. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a

statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint issued by the Commission.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

9. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this order the following definitions shall apply:

"Carbon black" means furnace-process and thermal-process carbon black, whether used for rubber or other applications.

"Bass Brothers" means Bass Brothers Enterprises, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

"SRCG" means Sid Richardson Carbon & Gasoline Co., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

"Ashland" means Ashland Oil, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

"Production capacity" means the practical annual productive capacity of all units, including units currently in operation and units that could be put into operation with or without time delay or additional investment.

I

It is ordered, That, unless Bass Brothers and SRCG have already done so, they will, not later than fourteen (14) days after this Order becomes final, terminate any agreement that provides for or contemplates the acquisition of Ashland's carbon black business by Bass Brothers or SRCG, including but not limited to the letter of intent signed on or about November 15, 1983, withdraw the premerger notification filing submitted to the Federal Trade Commission with respect to that letter of intent, return or destroy all documents containing or recording confidential information provided to Bass Brothers or SRCG by Ashland, and recover from Ashland all documents containing or recording confidential information provided to Ashland by Bass Brothers and SRCG, in connection with acquisition negotiations or agreements. Nothing herein contained shall relieve Bass Brothers or SRCG from any obligation of confidentiality imposed by agreement among Bass Brothers, SRCG and Ashland.

II

It is further ordered, That for a period of five (5) years from the date this Order becomes final, neither Bass Brothers nor SRCG shall acquire, directly or indirectly, without the prior approval of the Commission, any part of the United States carbon black business of any other person or corporation, whether represented by securities or assets, other than products or securities obtained in the regular course of business, if as a result of such acquisition Bass Brothers or SRCG would cumulatively increase its United States carbon black production capacity by more than 130 million pounds.

III

It is further ordered, That while Paragraph II of this Order is effective, Bass Brothers or SRCG shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, that may affect compliance obligations arising out of this Order.

IV

It is further ordered, That Bass Brothers or SRCG shall, within thirty (30) days after making an acquisition of United States carbon black production capacity permitted under this Order while Paragraph II of this Order is effective, file with the Commission a written report describing such acquisition.

V

It is further ordered, That Bass Brothers and SRCG shall, within sixty (60) days after service upon them of this Order, file with the Commission a written report setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Bass Brothers Enterprises, Inc., and Sid Richardson Carbon & Gasoline Co. (together "BBE").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should

withdraw from the agreement or make final the agreement's proposed order.

The complaint, which was issued May 8, 1984, challenges, as violations of Section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, the proposed acquisition by BBE of assets of Ashland Chemical Co., a division of Ashland Oil, Inc. ("Ashland"). The complaint alleges that both BBE and Ashland are substantial competitors in the United States carbon black market; that the United States carbon black market is highly concentrated, and that barriers to entry into the production and distribution of carbon black are substantial. The complaint alleges that the effects of the proposed acquisition would be to eliminate substantial actual competition between BBE and Ashland, and eliminate Ashland as a substantial competitor in the carbon black market; to substantially increase concentration in an already highly concentrated market and encourage additional mergers or acquisitions in that market, thus increasing the likelihood of collusion; to tend to reduce the degree of price competition and to reduce the volume of production below competitive levels; and to tend to reduce the actual competition among other companies engaged in the production and distribution of carbon black. The complaint charges that the proposed acquisition constitutes a violation of section 5 of the Federal Trade Commission Act, and if consummated, would constitute a violation of Section 7 of the Clayton Act.

The proposed order requires BBE to obtain prior Commission approval for a period of five years for acquisition of securities or assets of a competitor in the United States carbon black business. The order covers acquisitions in both the rubber carbon black and the "industrial," non-rubber carbon black businesses. No prior approval is required if the cumulative total capacity added through acquisitions is less than 130 million pounds. BBE is required to notify the Commission within 30 days after making any carbon black acquisitions for which prior approval is not required.

The order's terms are substantively identical to those contained in the final order against Columbian Enterprises, Inc. in the litigation involving another acquisition in the carbon black business, Docket No. 9178.

The agreement is for purposes of settlement only; it does not constitute an admission by BBE that the law has been violated as alleged in the Complaint.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-11618 Filed 5-22-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mines; Electricity

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability of preproposal draft.

SUMMARY: The Mine Safety and Health Administration (MSHA) has developed a preproposal draft of revisions to existing electrical standards for underground coal mines. This review is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Department of Labor's initiatives with respect to improving regulations. MSHA seeks written comments on this preproposal draft from all interested parties.

DATES: Written comments on the preproposal draft must be received on or before July 22, 1986.

ADDRESSES: Please send requests for and written comments on the preproposal draft to the Office of Standards, Regulations and Variances, MSHA Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, telephone (703) 235-1910.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On July 9, 1982, MSHA published an Advance Notice of Proposed Rulemaking in the **Federal Register** (47 FR 30025) announcing a comprehensive review of the underground coal mining standards in 30 CFR Part 75. The Agency is reviewing the standards to eliminate unnecessary reporting and recordkeeping requirements, minimize conflicting provisions, delete irrelevent standards, simplify and consolidate existing standards, update standards to conform to state-of-the-art technology, and to clarify and reorganize standards, where necessary.

This review is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Department of Labor's initiatives with respect to improving regulations. MSHA considers early public participation in this standards review process to be particularly important.

MSHA has now completed development of a preproposal draft for underground coal mine electrical standards. The Agency requests comments on the substance of the preproposal standards, as well as on the reorganization of the standards. The Agency is also interested in receiving comments from coal mining State agencies, particularly on the provisions related to electrical and cable splice qualification. In addition, the Agency is interested in economic data and other regulatory impact information.

Copies of the preproposal draft have been mailed to persons and organizations known to be interested. Other interested persons and organizations may obtain a copy of the draft by either oral or written request to the address provided above. The document contains the Agency's intended revisions, a comparison with existing provisions, and brief explanations of the draft changes.

MSHA welcomes written comments relevant to issues concerning the preproposal draft. Upon close of the comment period, review of the comments, and any economic data and other regulatory impact information received, MSHA will develop revised standards which will be published as a proposed rule in the **Federal Register**. The proposal will be followed by a comment period and public hearings. In issuing its final rule, MSHA will make every effort to be responsive to the concerns of the coal mining community and to advance the goals of regulatory reform and improved miner safety and health.

Dated: May 20, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Ch. I

[CGD 84-099A]

Operation of a Vessel While Intoxicated; Advance Notice of Proposed Rulemaking

AGENCY: Coast Guard, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard invites comments on the problem of drug and alcohol use by individuals operating recreational vessels and the options available for regulatory or other action. Recent legislation provides civil and criminal penalties for an individual who is intoxicated while operating a vessel as determined under standards prescribed by the Secretary. The Coast Guard is considering various approaches to promulgating a standard applicable to the operation of a recreational vessel. After evaluation of the responses to this Advance Notice, proposed regulations would be published in the **Federal Register** and additional comments invited.

DATE: Comments must be received on or before August 21, 1986.

ADDRESSES: Comment should be submitted to Commandant (G-CMC/21), (CGD 84-099), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 8 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Boating Safety Division (G-BBS/43), Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 426-1080 (after July 14, 1986, 267-0992), between 9 a.m. and 3 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The purpose of this Advance Notice is to solicit information and views on the problem of intoxicant use by individuals operating recreational vessels and the appropriate means of prescribing a standard for determining intoxication, as required by statute. Interested persons are invited to submit written views, data or arguments. Persons submitting comments should include their names and addresses. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

The Coast Guard is required by the provisions of the Coast Guard Authorization Act of 1984 (Pub. L. 98-557) to establish appropriate standards for determining whether an individual is intoxicated while operating a vessel. This Act amended Title 46 United States Code 2302(c) to provide that "An individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation, shall be—(1) liable to the United States Government for a civil penalty of not more than $1,000; or (2) fined not more than $5,000, imprisoned for not more than one year, or both." The Act also amended Section 6101 and 6102 of title 46 United States Code to require that marine casualty reports include information as to whether the use of alcohol contributed to the casualty.

Comments are requested on all or any portion of this Advance Notice, including the portions of the Advance Notice that are directed at the extent and seriousness of the alcohol problem, and on any additional options or issues that affect maritime safety.

This Advance Notice sets forth in summary form available information concerning the extent of this problem, the status of State efforts to address this problem, some options available for Federal regulatory action, and some of the various legal and practical issues presented by the options.

This Advance Notice addresses implementation of the provisions of Title 46 U.S.C. 2302 as it applies to individuals who operate recreational vessels.

The Coast Guard is proposing regulations in regard to alcohol and drug use by licensed individuals and other members of the crew of commercial vessels. The proposed rules affecting commercial vessel personnel are contained in a separate rulemaking (CG) 84-099) published elsewhere in this issue of the **Federal Register**. The proposed regulations also include changes to the reporting of marine casualties, including those involving recreational vessels, to carry out the mandate of Pub. L. 98-557, and would allow Coast Guard Boarding Officers to take immediate and reasonable steps including terminating further use of the vessel based upon obvious operator intoxication.

Background

Data on recreational boating accidents compiled by the Coast Guard indicates that alcohol consumption is a causal or contributing factor in approximately ten percent of the more than 1200 fatalities which result from boating accidents each year. Accident reports submitted to the Coast Guard under the provisions of 33 CFR Part 173 and 174 currently understate the extent of alcohol involvement. The procedures and requirements for investigations vary from State to State and locality to locality. Accident reports are submitted by individuals and by State or local authorities. Some of these reported accidents have undergone extensive investigation while other have had only cursory examination. Furthermore, individuals submitting reports may have strong reasons not to volunteer information about alcohol involvement.

Not all States require that toxicological tests be taken in accidental deaths. Based upon toxicological testing by States which have a mandatory requirement for these tests in cases of accidental deaths, and studies conducted by the Coast Guard and the National Transportation Safety Board, the Coast Guard believes that the involvement of alcohol is much greater than indicated by current reports and that some degree of impairment by alcohol may be involved in as many as fifty percent of recreational boating fatalities.

The Coast Guard has not maintained separate data on the involvement of drugs in recreational boating accidents; however, it seems reasonable that the use of drugs by boaters is similar to that of persons driving automobiles. According to preliminary data on fatal motor vehicle accidents compiled by the National Highway Traffic Safety Administration, in 5% to 15% of accidents resulting in driver fatalities and approximately 10% of accidents causing driver injuries, there was evidence of drug use by the driver.

In the recreational boating area, the Coast Guard has concentrated on educational efforts to combat the problem. The Coast Guard and State enforcement officials have recognized that the consumption of alcoholic beverages among recreational boaters is widespread. Drinking is facilitated because there are no laws prohibiting the consumption of alcoholic beverages while underway in a boat; picnic coolers or galley facilities are frequently available to store and serve alcoholic beverages; and, whether fishing, cruising, or sailing, there are lengthy periods of time when the boaters, including the operator, are not fully occupied. The slow speed of most boating activity, compared to operation of an automobile, and the relatively unconfined nature of most waterways

have contributed to a lack of awareness of the risks involved. The educational effort has concentrated on making boaters aware that "Boating and alcohol don't mix."

The Coast Guard and National Transportation Safety Board have worked in concert with the various States and boating organizations to address the alcohol problem. The National Safe Boating Council, Inc. with a volunteer membership of 39 organizations including the Coast Guard Auxiliary, U.S. Power Squadrons, American Red Cross, Boy Scouts, Girl Scouts, YMCA, other Federal agencies concerned with boating safety, and numerous manufacturer and boating organizations, sponsors National Safe Boating Week. For the past two years the theme of National Safe Boating Week has been "Be a responsible boat operator." The slogan used was "Think before you drink."

The Coast Guard has emphasized and will continue to emphasize the alcohol problem in its educational efforts. Under the provision of 46 U.S.C. 13102(c)(4), States are now required to have an alcohol awareness educational program in order to receive Federal financial assistance.

In addition to the educational efforts, the Coast Guard and the States have coordinated law enforcement efforts and have recommended improvements in boating safety laws, including laws directed towards intoxicated operators. At its meeting on October 3, 1984, the National Association of State Boating Law Administrators issued guidelines for State programs to attack the problem. These guidelines included suggestions for State laws.

In one form or another, all of the States have passed laws which prohibit the operation of vessels while intoxicated. Within the past several years there has been an increasing awareness of the problem by State legislatures and several States have strengthened their laws. Twenty-one states have specified an intoxication level for individuals operating vessels. One State has a blood alcohol content (BAC) level of .08 percent. One State has a BAC level of .08 percent as prima facie evidence of operating under the influence, and a .13 percent BAC level as prima facie evidence for operating while intoxicated. The other 19 States have a .10 percent BAC level for intoxication.

Recent studies have shown that impairment may occur at lower BAC levels. These studies are addressed in the rulemaking concerning standards for commercial operation (CGD 84-099) published elsewhere in this issue of the **Federal Register**.

Approach

The Coast Guard is in the process of determining its proper regulatory role. There are at least three different regulatory approaches which the Coast Guard is considering: (1) The Coast Guard could adopt a mandatory Federal standard; (2) the Coast Guard could prescribe a standard that would apply only in the absence of a State standard; or (3) the Coast Guard could adopt State standards. Under each of these approaches several questions need to be answered.

Federal vs. State Standards for Recreational Vessels

Incorporating State law standards would be less intrusive than setting Federal standards. This seems reasonable with law enforcement conducted primarily by State and local officials. However, it also means the Coast Guard would be enforcing different standards, dependent on which State's waters were involved. The Coast Guard also exercises jurisdiction in waters outside the jurisdiction of any State. Recreational boaters and law enforcement personnel alike, operating in the vicinity of adjoining States' seaward boundary or three mile limit, may have difficulty determining which standard applies. Setting a Federal standard would give the Coast Guard a tool to use during routine boarding when an intoxicated operator is encountered. It would not preempt any equivalent or stricter State standard.

Questions

1. Should the Federal Regulations promulgate a national standard for operating a vessel while intoxicated?

2. Should the Federal Regulations adopt State laws by reference, so that where a State has prescribed a standard for intoxication, Federal law would not conflict?

3. If State laws are adopted by reference, what Federal standard should apply on the high seas (33 CFR 2.05.1(a)) and on waters subject to the jurisdiction of the United States (33 CFR 2.05.30) but not of any state (i.e., Federal enclaves) or on waters located within National Parks (16 U.S.C. la.2(h)?

Definition of "Intoxication" For Recreational Vessels

State laws range from general prohibition of operating a vessel while intoxicated to application of the State motor venicle laws to vessels, and include BAC levels, behavioral standards, both or neither. The Coast Guard is required to establish the criteria by which a person may be determined to have violated the Federal law.

Questions

1. Should any Federal rule specify a blood alcohol concentration (BAC) that would constitute presumptive evidence of intoxication? What level is appropriate? Should the Coast Guard adopt the BAC level adopted by a majority of the States for motor vehicle operation (i.e., .10 percent)?

2. Should a Federal rule be developed which would define a behavioral definition of intoxication? For example, "An individual may not operate or be in actual physical control of the movement of a vessel while under the influence of drugs or alcohol to a degree which impairs his or her physical or mental responses and activities."

3. Should a Federal rule include both a behavioral definition and BAC level?

4. For a State that has only a behavioral definition, should there be a Federal BAC standad to supplement State law.

5. Should a Federal standard include drugs?

Enforcement for Recreational Vessels

The Coast Guard anticipates that the primary enforcement of laws or regulations concerning the operation of recreational vessels by persons who are intoxicated will be by State and local officials. While the Coast Guard will be encouraging an aggressive enforcement program against intoxicated operation of recreational vessels, no additional Federal resources are anticipated. However, because the Coast Guard is concerned about the injuries and deaths caused by intoxicated individuals operating recreational vessesl, at a minimum, Coast Guard Boarding Officers would enforce these standards when an intoxicated operator is encountered during routine boardings.

Questions

1. Since the primary enforcement of boating laws is conducted by State and local agencies, what is the proper Coast Guard enforcement role? A determination must be made on the extent it is practical to combine this role with other Coast Guard law enforcement functions.

2. If testing for blood alcohol concentration (BAC) is adopted, how and under what circumstances should concentrations be measured? Who should administer the tests?

3. In a separate rulemaking, the Coast Guard is proposing that if a person

operating a commercial vessel refuses to take a test for intoxication, the individual will be presumed to have been intoxicated for the purposes of any subsequent administrative proceeding. Should refusal of the operator of a recreational vessel to take a test be a separate violation or admission of intoxication?

4. Should testing for drug intoxication be conducted in the field? If so, how and under what circumstances should the drug presence and concentration be measured? Who should administer the tests?

Regulating the use of alcohol by recreational boaters is a new program for the Coast Guard. The Coast Guard has solicited the views of other Federal agencies, State and local agencies, and the National Transportation Safety Board. The National Boating Safety Advisory Council has been alerted to the existence of the new law and that this Advance Notice would be available for its consideration. Although this Advance Notice raises various options and approaches, additional approaches and combinations of approaches may warrant consideration. The Coast Guard is interested in improving the data available on the scope and extent of the problem of persons operating a vessel while intoxicated. Therefore, public comment is requested on all measures that could be taken to alleviate the drug and alcohol problem as it affects recreational boating. Copies of accident data or research studies conducted would be particularly helpful. Your participation will assist the Coast Guard in the development of any proposed regulations resulting from this Advance Notice.

Regulatory Evaluation

This proposal has been determined to be non-major under Executive Order 12291. However, this proposal is considered significant under the DOT rgulatory policies and procedures (44 FR 11034) because it would initiate a substantial regulatory program. In issuing the Advance Notice, the Coast Guard is seeking public reaction to a wide range of regulatory options, which could, depending on the option selected, range in impact from negligible to one significantly affecting the recreational boating public.

The Coast Guard anticipates that responses to the ANPRM will help it determine appropriate approaches to take in regulating intoxicated operation of recreational vessels. Accordingly, no detailed regulatory evaluation has been attempted at this stage. However, the Coast Guard is aware of the potential for significant impacts from this proposed rulemaking should various regulatory options eventually be chosen. Information collection and reporting associated with the proposal is expected to be minimal.

Dated: May 19, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard, Commandant.

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33 CFR Parts 95, 146, 150, 173, and 177

46 CFR Parts 4, 5, 35, 78, 97, 109, 167, 185, 196, and 197

[CGD 84-099]

Boating Safety; Operating a Vessel While Intoxicated

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes regulations designed to monitor, control and reduce alcohol and drug use in both recreational vessel operation and commercial marine operations including operations of the Outer Continental shelf and at deepwater ports. Recent legislations provides civil and criminal penalties for an individual who is intoxicated while operating a vessel, as determined under standards prescribed by the Secretary. This Notice proposes standards applicable to commercial vessels and vessels subject to a statutory manning requirement for determined intoxication caused by alcohol or drugs, either based on a percentage of alcohol in the blood or on observations of the individual's demeanor or performance. Standards applicable to recreational operations are being addressed in a separate rulemaking [CGD 84-099A] appearing elsewhere in this issue of the **Federal Register.** In addition the Coast Guard proposes: (1) To prohibit crewmembers on vessel subject to inspection from performing any duties while intoxicated or within four hours of consuming any alcohol; (2) civil penalties for owners, charterers, managing operators, agents, masters or individuals in charge of vessels subject to inspection that allow crewmembers to perform any duties while intoxicated; (3) to allow personnel licensed, documented or certificated by the Coast Guard to seek rehabilitation prior to being subject to a proceeding to suspend or revoke the license, certificate, or document; (4) to allow Coast Guard personnel to terminate the use of certain vessels when the operator is under the influence of an intoxicant to the extent that further operation of the vessel creates an unsafe condition; and (5) to amend the regulations requiring reports of all marine casualties to include specific information on the role of alcohol or drugs in the casualty. These proposals are based on the belief by the Coast Guard and alcohol and/or drugs are involved in a substantial number of recreational boating casualties and contribute to numerous commercial marine casualties. The proposals are intended to reduce recreational and commercial marine casualties caused by intoxication.

DATES: Comments must be received on or before August 21, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 84-099), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council; (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: CDR George Naccara or LCDR Joseph Steen, Merchant Vessel Personnal Division (G-MVP/12), (202) 426-2240 (after July 14, 1986 (202) 267-0225), for information on commercial vessel operating requirements.

LCDR David Wallace, Marine Investigation Division (G-MMI/24), (202) 426-2215 (after July 14, 1986 (202) 267-1420), for information on commercial vessel casualty reporting and the rehabilitation program.

Mr. Carlton Perry, Boating Safety Division (G-BBS-3/43), (202) 426-1080 (after July 14, 1986 (202) 267-0992, for information on recreational boating casualty reporting and the terminations of unsafe use.

The above persons can be contacted at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, between 9 a.m. and 4 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to propose regulations concerning intoxicant use by individuals operating vessels. Interested persons are invited to submit written views, data or arguments. Persons submitting comments should include their names and addresses, identify this Notice (CGD 84-099) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons desiring acknowledgment that their comments

have been received should include a stamped, self-addressed postcard or envelope.

No public hearing has been scheduled but one may be held if requested by persons raising a genuine issue and it is determined that the rulemaking will benefit from oral presentations.

Background

The Coast Guard has the authority to investigate marine casualties and take appropriate action against the responsible person. The Coast Guard has dealt with the problem of alcohol and drug use on vessels through civil penalty or criminal enforcement action for negligent operation of a vessel under 46 U.S.C. 2302 and its predecessor statutes. Also, the Coast Guard may suspend or revoke the license, certificate or document of maritime personnel under 46 U.S.C. 7701 and its predecessor statutes, if they use dangerous drugs or are intoxicated when performing duties.

To assist in determining the causes of marine casualties, the Coast Guard maintains two casualty reporting systems: One addressing recreational vessel casualties (33 CFR Parts 173 and 174); and one addressing commercial marine casualties, including commercial vessels (46 CFR Part 4), commercial operations on the Outer Continental Shelf (33 CFR Part 146), deepwater ports (33 CFR Part 150), and commercial diving operations (46 CFR Part 197).

Data on recreational boating accidents compiled by the Coast Guard indicates that alcohol consumption is a causal or contributing factor in approximately ten percent of the more than 1200 fatalities which result from boating accidents each year. Accident reports submitted to the Coast Guard under the provisions of 33 CFR Parts 173 and 174 currently understate the extent of alcohol involvement. The procedures and requirements for investigations vary from State to State and locality to locality. Accident reports are submitted by individuals and by State or local authorities. Some of these reported accidents have undergone extensive investigation while others have had only cursory examination. Furthermore, individuals submitting reports may have strong reasons not to volunteer information about alcohol involvement.

Not all States require that toxicological tests be taken in accidental deaths. Based upon toxicological testing by States which have a mandatory requirement for these tests in cases of accidental deaths, and studies conducted by the Coast Guard and the National Transportation Safety Board, the Coast Guard believes that the involvement of alcohol is much greater than indicated by current reports and that some degree of impairment by alcohol may be involved in as many as fifty percent of recreational boating fatalities.

The Coast Guard has not maintained separate data on the involvement of drugs in recreational boating accidents. Since recreational boaters come from the same general population that owns and operates motor vehicles, it may be assumed that the use of drugs by boaters is similar to that of persons driving automobiles. According to preliminary data on fatal motor vehicle accidents compiled by the National Highway Traffic Traffic Safety Administration, in 5% to 15% of accidents resulting in driver fatalities and approximately 10% of accidents causing driver injuries, there was evidence of drug use by the driver.

Although not specifically identified previously as a major causal factor in commercial vessel losses or casualty damage, the use of alcohol has had an impact on marine safety. From 1981 to the present, vessel casualty records reveal 44 deaths, 3 persons missing, and 33 injuries attributable to the use of alcohol. During the period 1982 through 1984 the Coast Guard took suspension or revocation action against 72 seamen for alcohol-related incidents.

The present casualty reporting program does not identify drug-related casualties; however, during the period 1982 through 1984, 101 hearings on the suspension or revocation of licenses, certificates, or documents resulted in findings of use of drugs or association with drugs. Reports have been received indicating that some shipping companies which have been screening their crews for drug usage have found that a significant number of their employees were users of drugs. An advance Notice of Proposed Rulemaking regarding the Certification of Seamen, (CGD 84-088) 50 FR 4875, February 4, 1985, solicited comments on drug and alcohol screening for all professional seamen. The comments received indicate drug use is significant.

In this rulemaking, the Coast Guard is proposing changes to the reporting system for recreational boating accidents and to the reports required for marine casualties involving commercial vessels to obtain better data on the involvement of alcohol and/or drugs in these areas.

For many years the Coast Guard has been enforcing statutes which prohibit the operation of a vessel in a negligent manner. The Motorboat Act of 1940 provided that no person shall operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. Under this section the word "negligent" has been held to mean failure to use that care which a reasonable person would excercise under similar circumstances. (U.S. v. Meckling, 141 F. Supp. 608, D. Md. 1956). The provisions were amended with the passage of the Federal Boat Safety Act of 1971 and criminal penalties were prescribed for a person who willfully violates the statute.

The prohibition against negligent operation was continued with the codification of Subtitle II of Title 46, United States Code, Shipping (Pub. L. 98-89, August 26, 1983). The prohibition against negligent operation is now contained in 46 U.S.C. 2302.

The instructions to Coast Guard Boarding Officers concerning enforcement procedures with respect to negligent operation of a vessel have contained provisions with respect to operating a vessel while intoxicated. The "Boarding Manual" issued on September 14, 1977 contained examples of situations which were considered negligent operation, including operating erratically under the influence of intoxicants or drugs.

Under the general authority contained in Parts E and F of Title 46, United States Code, the Coast Guard has been delegated the responsibility by the Secretary of Transportation to issue licenses, certificates, and documents to qualified individuals, and to determine the necessary complement of licensed individuals and crew for safe operation of certain vessels. The Coast Guard has promulgated regulations to implement the statutes in Title 46 of the Code of Federal Regulations, primarily in Parts 10, 12, 157, 186 and 187. The regulations apply to Coast Guard inspected vessels, uninspected commercial vessels and other vessels subject to a manning requirement under Part F of Title 46 U.S. Code which range in size and type from small charter fishing boats and towing vessels to drilling units and large tank ships.

Under Chapter 77, Title 46, United States Code, the Coast Guard has the authority to suspend or revoke any license, certificate or document issued to a person if that person is found to be incompetent, or to have committed acts of misconduct or negligence. Intoxication while performing duties under the authority of a license, certificate, or document has been long considered an act of misconduct. The administrative actions against a license, certificate, or document are remedial, to help maintain standards of competence and conduct essential to the promotion of safety at sea.

Section 7 of the Coast Guard Authorization Act of 1984 (CGAA), (Pub. L. 98–447 October 30, 1984), added emphasis to the existing statutes under which the Coast Guard addressed intoxication while operating a vessel by adding paragraph (c) to 46 U.S.C. 2302 which provides that:

"An individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation, shall be—

(1) Liable to the United States Government for a civil penalty of not more than $1,000; or

(2) Fined not more than $5,000, imprisoned for not more than one year, or both."

Section 7(b) amended 46 U.S.C. 6101(b), to require that reports of marine casualties include information as to whether the use of alcohol contributed to the casualty. It also amended the provisions of the State marine casualty reporting system (46 U.S.C. 6102) to require that States submitting reports include information and statistics concerning the number of casualties in which the use of alcohol contributed to the casualty.

The CGAA also amended 46 U.S.C. 13102(c)(4), to require States to have an alcohol awareness educational program in order to receive Federal financial assistance.

This rulemaking proposes rules to define "intoxicated" to implement 46 U.S.C 2302(c) as it pertains to commercial vessel operations and individuals licenses certificates documented by the Coast Guard that are serving under the authority of their license certificate or document. It also proposes rules which will emphasize the responsibility of the owner, operator, master, or person in charge of a vessel to prevent intoxicated persons from operating a vessel, and proposes limitations on the consumption of alcohol by crewmembers of vessels subject to Coast Guard manning requirements.

As previously indicated, this rulemaking addresses improved casualty reporting, including implementing the amendments to 46 U.S.C. 6101(b) and 46 U.S.C. 6102. No additional action is required to implement 46 U.S.C. 13102(c)(4), since each year the Coast Guard enters into contractual agreement with each State that desires to participate in the financial assistance program. In these agreements each State assures the Coast Guard that it includes alcohol awareness in its educational program.

The Coast Guard has examined the problems associated with toxicological testing for blood alcohol concentration levels and drug ingestion. A primary problem is to prevent refusal to submit to testing from being to the individual's advantage in civil proceedings. The prevailing reason for refusal of testing is believed to be the individual's concern that the test results will be adverse—that he or she will "fail' the test and that subsequently the test results will be used to support a determination that the individual was, in fact, intoxicated.

To encourage cooperation most States have have, by statute, created an "implied consent" to testing by licensed drivers—failure to submit to or cooperate in testing is a basis for withdrawal of driving privileges. This approach is not available for the majority of commercial vessel operations because many personnel involved in commercial operations such as those in the fishing industry and most crewmembers on inspected small passenger vessels and uninspected towing and passenger vessels are not required to have a license under Federal law. For those crewmembers who are required to have a license, the statutory grounds for revocation do not include refusal to submit to testing. To prevent refusal of testing from being to the individual's advantage, the Coast Guard is proposing that refusal to submit to or cooperate in testing will be admissible in evidence at administrative proceedings and, under certain circumstances, will support a presumption that the individual was intoxicated. In other words, proof of intoxication may be established solely by the refusal to submit to testing.

The Coast Guard is sensitive to unwarranted infringement of an individual's right to refuse to submit to testing. The presumption of intoxication would be applied only when a timely test was directed by a law enforcement officer or investigating officer who had reasonable belief that the individual to be subjected to testing was intoxicated. In view of the variety of circumstances under which tests may be administered, and the different types of current tests and others under development, the Coast Guard is not proposing a time limit on testing. Timeliness would be determined on a case by case basis by the hearing officer or Administrative Law Judge. Law enforcement officers and investigating officers have training in observing and dealing with persons who may be intoxicated and do not have a personal interest in the outcome of testing. They may be expected to direct testing only in appropriate instances, where there is logical basis for the presumption of intoxication if the individual refuses. Where an untrained, and perhaps not impartial master or person in charge directs testing of a crew member, no presumption would arise out of refusal. The fact of refusal would be admissible in an administrative proceeding, but the weight to be given that fact would depend on the total circumstances.

The penalties for operating a vessel while intoxicated include civil or criminal penalities and suspension or revocation of merchant mariners' licenses, documents or certificates. It is emphasized that nothing in the proposed regulations authorizes the non-consensual testing of an individual, but this does not affect the authority of law enforcement officers to compel testing when there exists probable cause to believe that evidence of a crime will be found. Also these proposed regulations do not address whether a refusal to voluntarily submit to testing would be admissible in a criminal proceeding.

Defining Intoxication

It is necessary to set a standard before any enforcement of 46 U.S.C. 2302(c) can take place. Implementation of 46 U.S.C. 2302 and its predecessor statutes has been delegated to the Coast Guard. The statute applies to all vessels operated on waters subject to the jurisdiction of the United States (including foreign and domestic vessels used for recreation or in commercial service) and to all vessels that are owned in the United States while the vessel is on the high seas. However, the standard proposed in this rulemaking applies only to commercial vessels and other vessels subject to statutory manning requirements. It is noted that the penalties provided by this statute do not apply while a vessel is in the territorial waters of another country.

As mentioned above, prior to the enactment of 46 U.S.C. 2302(c), the Coast Guard has, under the authority of 46 U.S.C. 7701–7705 and its predecessors, suspended or revoked the licenses, documents or certificates of merchant marine personnel for incidents involving intoxication. The Coast Guard also has operational requirements that prohibit intoxicated persons serving on a vessel carrying hazardous liquid cargo in bulk (46 CFR 35.05–25). These actions were taken without a standard of intoxication prescribed by regulation. The evidence used to establish violations typically consists of observations of the individual's behavior or demeanor by other crewmembers. Testing equipment has not been and is not currently available on commercial vessels. The standards proposed in this Notice would become applicable to suspension and

revocation proceedings and operational requirements addressing intoxication.

The Coast Guard is proposing a blood alcohol concentration (BAC) level of .10 percent for vessels which are not subject to manning requirements under Part F of Title 46 United States Code (46 U.S.C. 8101–9307) (hereinafter Part F). A BAC of .10 percent is the level adopted by 19 of the 21 States who have adopted BAC standards. This is the level which has been almost universally adopted by the States in their motor vehicle statutes.

The Coast Guard proposes to prohibit a person from serving as a crewmember on a vessel subject to the manning requirements of Part F while having a BAC level of .04 percent or higher. The .04 percent alcohol content standard for crewmembers is designed to ensure that the persons operating the majority of commercial vessels, both foreign and domestic, are not impaired by alcohol. The reasons for this are simple. Commercial vessels subject to the manning requirements of Part F will normally be carrying a larger number of persons on board than other commercial vessels, and frequently carry hazardous cargo or oil. In the event of an accident, there is greater risk of loss of life or damage to property or the environment. In addition, persons who are employed to perform duties aboard these ships should have an obligation to ensure that their capacity to perform those duties is not even slightly impaired by the voluntary consumption of alcohol.

Considerable data from experimental or clinical settings support the proposition that low levels of alcohol can, and regularly do, have detrimental effects on human performance, including divided attention skills and information processing. Although detrimental effects are reported at lower levels, and even after alcohol is eliminated from the body (the so-called "hangover effect"), the consensus of scientific and professional opinion appears to be that material detrimental effects on human performance begin at least in the range of .04 percent. See, *e.g.*, American Medical Association, *Alcohol and the Impaired Driver* at 58–59 and research summarized at 36–57 (1970, reprinted by National Safety Council 1976); Bjerver, B.M., and Goldberg, L., "Effect of Alcohol Ingestion on Driving Ability," *Quarterly Journal of Alcohol Studies*, 11:1–30, 1950; Billings, C.E. *et al.*, "Effects of Alcohol Ingestion on Driving Ability," *Aerospace Medicine*, 44:379–382, 1973; Laurell, Hans, "Effects of Small Doses of Alcohol on Driver Performance in Emergency Traffic Situations," *Accident Analysis and Prevention*, 9:191–201, 1977; *Alcohol and Highway Safety, 1984*, at 16–23 (National Highway Traffic Safety Administration); *Alcohol and Highway Safety, 1978*, at 15–19 (National Highway Traffic Safety Administration).

Although low levels of alcohol may not appreciably affect simple reaction time in most persons, they may appreciably affect choice reaction time (response in divided attention situations, of the kind experienced by operators of transportation vehicles). See, *e.g.*, Huntley, M.S., Jr., "Effects of Alcohol and Fixation Task Difficulty on Choice Reaction Time to Extrafoveal Stimulation," *Quarterly Journal of Studies on Alcohol*, 34(1):89–103, 1973. Indeed, some studies suggest that significant decreased performance may be measurable at BAC's below .04 percent. See, *e.g.*, Moskowitz, H., "Skills Performance at Low Blood Alcohol Concentrations" (Southern California Research Institute, May 1984; unpublished); Flanagan, N.G., "The Effects of Low Doses of Alcohol on Driving Performance," *Medical Science Law*, 23(3): 203–209, 1983. It is noted that the .04 percent BAC standard has been adopted by the Federal Railroad Administration and the Federal Aviation Administration as the limit for crews involved in commercial operations.

Although marine-specific studies are not available, persons operating vessels perform tasks similar to many of those performed by subjects of the above alcohol studies, requiring that they be free from the known physiological effects of even low levels of alcohol.

In addition to proposing a blood alcohol concentration standard, the Coast Guard is proposing to define intoxication in terms of observed behavior and appearance of an individual, thereby formalizing past practices. A behavioral standard, although less precise than a BAC standard, is essential for several reasons. First, in many instances testing for blood alcohol level may not be available within an acceptable time frame or the person may refuse to consent to the test. Second, intoxication may be caused by drugs, or a combination of drugs and alcohol where the BAC standard is not exceeded. In addition, while the proposed BAC levels are statistically sound, there may be individuals with a susceptibility to alcohol or drug/alcohol combinations such that they are seriously impaired at levels lower than the proposed BAC standards. The behavioral standard may also be used as a measure of what constitutes reasonable cause to test a person for drugs or alcohol.

There are many variations in the statutes defining intoxication in terms of observed behavior. The Coast Guard in proposing that a person is intoxicated when "under the influence of an intoxicant to the degree that the effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation." This is based on the definition in section 4–2(14), Code of Virginia. This particular definition has been upheld by both the Virginia courts and Federal courts, which have also recognized that a behavioral definition and a BAC standard can co-exist. See: United States v. Gholson, (319 F. Supp. 499, E.D. Va. 1970).

It must be stressed that the behavioral standard is independent of the BAC standard. A person may be tested and may not reach the thresholds of .10 percent or .04 percent, or test results may not be available, yet the person may be found to have been intoxicated under the behavioral standard. Intoxication can occur without exceeding the BAC standards when the individual has a low tolerance for alcohol or when it is due to a combination of drugs, including lawfully prescribed drugs, and alcohol. Thus, the standards take into account a person's ability to "mask" intoxication or a person's susceptibility to intoxication. However, evidence that the BAC standard was not exceeded would be considered in determining whether intoxication has been established.

Defining "Operating a Vessel"

Defining who is "operating a vessel" under 46 U.S.C. 2302, by regulation, is not feasible. For small commercial vessels whose power and steering are controllable by a single person at a central location, that person is clearly the person operating the vessel. However, for larger commercial vessels, where persons are on deck and engineering watches, and the entire crew is available for emergency duty, the difference between operators and non-operators is difficult to distinguish. The same can also be said of sailing vessels, which may have several persons assisting with the sails. Thus, for vessels which are not subject to the manning requirements under Part F, the determination of whether an individual is "operating a vessel" must be conducted on a case by case basis. For the majority of commercial vessels not subject to manning requirements, all the persons in the crew on duty or watch will normally be considered to be operating the vessel. For vessels subject

to manning requirements, all members of the crew required to be on board for routine or emergency duties will normally be considered to be operating the vessel. The Coast Guard intends to interpret this as including those members of the crew who are not listed on the Certificate of Inspection, such as bartenders, waiters, etc. These crewmembers may be assigned emergency duties, and passengers will look to them for assistance and guidance during an emergency.

The requirement to be "operating a vessel" is essential only for the imposition of civil or criminal penalties under 46 U.S.C. 2302(c). As noted above, the standard for intoxication applies to suspension and revocation proceedings and to the ability to serve as a required member of the crew.

Additional Rules and Requirements

The Coast Guard has additional authority to set restrictions on crewmembers of certain vessels. There is authority for setting operating requirements for vessels subject to inspection in 46 U.S.C. 3306. Regulations issued under this statute can not apply to any uninspected vessels which include, among others; the majority of commercial fishing vessels, towboats, and vessels carrying six passengers or less.

All inspected vessels and many uninspected vessels are also subject to manning requirements under Part F. Under 46 U.S.C. 8105 there is broad authority for regulations to carry out Part F. The Coast Guard considers that this authority, coupled with our authority to set qualifying requirements for licensed and certificated personnel under 46 U.S.C. 7101, and our authority to prescribe regulations regarding qualifications for documented personnel under 46 U.S.C. Chapter 73, provide sufficient authority for the Coast Guard to specify that a person required to be present under Part F is unavailable for service when intoxicated.

The Coast Guard is thus proposing requirements for inspected vessels and regulations concerning compliance with the manning requirements under Part F. These regulations are considered necessary for the same reasons as the proposed .04 percent BAC standard. Personnel on a vessel subject to the manning requirement of Part F must be held to a higher degree of responsibility, since such operations usually involve a larger risk to both passengers and crew and greater hazards to property or the environment. In addition, the manning requirements under Part F would be ineffective if intoxicated persons could fill required positions.

Crewmembers of inspected vessels will not be allowed to consume alcohol within four (4) hours of scheduled watch or duties, or while on watch or duty. These rules define readily observable actions, and are designed to facilitate compliance with the strict intoxication standard for personnel on commercial vessels, without completely prohibiting the consumption of alcoholic beverages.

The Coast Guard proposes a rule that, if a person is intoxicated, that person may not be counted towards meeting the vessel's complement under the manning requirements of Part F. The owner, operator, master, person in charge, person in command of a watch, and possibly others, may be subject to civil penalties, as well as suspension or revocation of licenses, certificates, or merchant mariner's documents, if they knowingly allow an intoxicated person to assume a watch or perform duty. It will always be the responsibility of the owner, operator, master, or person in charge of a vessel to prevent an intoxicated person from operating a vessel. It may also be an act of misconduct by other crewmembers if they fail to report persons who they know are intoxicated to the owner, charterer, operator, agent, master, or person in charge.

If an inspected vessel is deprived of a crewmember's services due to intoxication, the vessel may not meet the manning requirements in Part F. If this occurs prior to sailing, 46 U.S.C. 8101 requires a replacement to be obtained if available. If the master finds the vessel sufficiently manned for the voyage, and replacements are not available, the vessel may proceed on its voyage but the master must report the decision to sail "short" to the Coast Guard. When authorized by 46 U.S.C. 8101, there is no penalty for sailing short but the decision is subject to review by the Coast Guard and the master, owner, or operator would be responsible for the consequences of an inappropriate decision. In addition, there is a penalty for failing to report sailing "short".

These rules should encourage all owners to implement screening of employees to prevent intoxicated individuals from assuming watches or duties. Owners are further encouraged to post information concerning the possible penalties that could come from operating a vessel while intoxicated, the effect on the safety of the vessel, and the obligations of all crewmembers to ensure that the standards are complied with. Owners are also encouraged to implement a total ban on the use of intoxicants on their vessels, with the exception of prescription drugs.

Nothing in this proposal should be construed as banning the employment of individuals using prescription drugs, or the proper use or possession of validly procured prescription drugs, if the medical practitioner dispensing the drugs has made a good faith determination that the drugs will not interfere with the crewmember's ability to perform assigned duties. Each crewmember should inform the master or person in charge of the vessel of his or her use of prescription drugs, and the possible side effects, at the beginning of each voyage or on change of command of the vessel.

Casualty Reporting

The current reporting system contained in the regulations is not an effective tool for measuring the contributing role of alcohol or drugs in vessel casualties. The Coast Guard is proposing to amend Part 173 of Title 33 Code of Federal Regulations and Part 4 of Title 46 Code of Federal Regulations to require all marine casualty reports, including State casualty reporting systems, to include information as to whether or not alcohol or drugs was a cause or contributed to the cause of a casualty, and to encourage post-casualty testing for intoxicants.

To provide the information on alcohol or drug involvement that is required be reported to the Coast Guard, this proposal provides for post-casualty tests for the presence of alcohol or drugs. These tests would be administered at the direction of a Coast Guard law enforcement officer or investigating officer or any law enforcement officer authorized to obtain a test under State or local law.

The Coast Guard is also proposing that refusal of a crewmember of a commercial vessel to submit to testing to determine the presence of alcohol or drugs will be admissible as evidence of intoxication at any administrative proceeding. This provisions would apply to post-casualty testing and testing on reasonable belief of observed intoxication. The weight to be given this evidence would be at the discretion of the hearing officer and would depend on the circumstances surrounding the refusal. In the Advance NPRM for recreational vessels, comments are requested as to whether similar provisions should be considered for the operation of recreational vessels.

The investigation of commercial marine casualties is handled by the Coast Guard; however, since most casualties occur far from a Coast Guard facility, Coast Guard investigating officers or other law enforcement

personnel are rarely available to determine if alcohol or drugs contributed to the casualty. For this reason, the proposal requires the owner, charterer, managing operator, agent, master or person in charge of the vessel to determine whether any person directly involved in the casualty was under the influence of alcohol or drugs. The proposal provides for the master or person in charge of a commercial vessel to direct a member of the crew to undergo testing to determine the presence of alcohol or drugs.

The following guidelines are given for determining the persons typically directly involved in a casualty.

(1) For a vessel casualty such as a collision, ramming, or grounding; the master, person in charge of the vessel, pilot, deck or engineroom watchstanders, lookouts, or any other person who may have been performing duties involved with the operation of the vessel, as appropriate, may be directly involved.

(2) For a vessel equipment casualty, such as a failure of propulsion, steering equipment, or auxiliary machinery; the chief engineer, engineroom watchstanders, and any other person involved in causing the casualty, may be directly involved.

(3) For fires and explosions; the master, chief engineer, and any other person involved in causing the casualty, may be directly involved.

(4) For injuries or death; the injured or deceased person(s), the person's supervisor, if the person was performing duties when the injury or death occurred, and any other person involved in the accident, may be directly involved.

The Coast Guard desires as much information relating to alcohol and drug use as can reasonably be obtained. Determinations of alcohol and drug involvement may be made by:

(1) Personal or reported observation of alcohol or drug use;

(2) Personal or reported observation of a person's manner, disposition, speech, muscular movement, bodily odors, general appearance or behavior; or

(3) Toxicological methods including breath analysis, urine or blood sample testing.

For accidents involving the use of alcohol, it is important that blood and urine sampling be conducted as soon as possible. If the use of a blood test or a urine test is not possible, as will normally be the case if the vessel is not in reasonable proximity to a port, a breath analysis test may be used. Since the cost of breath analysis equipment is not prohibitive and this equipment requires only minimal training to operate, vessel owners are encouraged to provide these devices and training in their use. The known availability of breath analysis equipment would further reinforce alcohol abstinence during or prior to duty hours.

When an individual is apparently intoxicated and there is no indication of alcohol use, drug use should be considered. Where use of drugs is suspected, blood or urine tests should be conducted as soon as reasonably possible. Blood sampling for either alcohol or drug testing must be conducted by qualified medical personnel. To establish proper identification, a proper chain of custody of all blood and urine samples should be maintained from the time of sampling through completion of legal proceedings.

The Coast Guard is also proposing to change the Report of Marine Accident, Injury or Death, Form CG–2692, by adding blocks for alcohol involvement and drug involvement in item 21, and by adding the following instuctions in item 44:

"List all persons directly involved in the casualty who used or were under the influence of alcohol or drugs. Explain how the determination was made, including observable behavior. If toxicological testing was directed, include results."

Enforcement

The actions available to enforce the proposed regulations can be broken down into four categories. First, there are the civil and criminal penalties specified in 46 U.S.C. 2302(c) that can be imposed against the person who is intoxicated while operating a vessel.

The second enforcement method is suspension and revocation proceedings against a licensed, certificated, or documented person who is intoxicated. Suspension or revocation of a license, certificate, or document will prevent a person who has demonstrated a lack of responsibility by being intoxicated while serving on a commercial vessel from continuing to serve. This action is also possible against the license, certificate, or document of the master, or any person supervising other crewmembers, if they knowingly allow a person to operate a vessel while intoxicated, and against other crewmembers who fail to report known intoxication. The intent is to make the entire crew responsible for the safe operation of the vessel. Suspension or revocation action could also be brought against the master or person in charge of a vessel for failure to submit Form CG–2692 and the required information concerning drug and alcohol involvement.

Penalties can be brought against a vessel, or the vessel's owner, operator, master, or person in charge, if a person operates a vessel while intoxicated or if a required crewmember performs duties while intoxicated. Civil penalties can also be brought against the vessel's owner, charterer, managing operator, agent, master, or person in charge of the vessel for failing to submit a Form CG–2692 for marine casualties; for failing to determine whether there is any alcohol or drug involvement by those directly involved in the casualty; or for failing to provide information concerning these determinations. These penalties are designed to ensure that the owners and management officials are involved in eliminating the use of intoxicants on their vessels.

Finally, the Coast Guard is proposing to amend Part 177 of Title 33 Code of Federal Regulations. This Part, titled "Correction of Especially Hazardous Conditions" applies to recreational vessels and uninspected passenger vessels. Under this Part, a Coast Guard Boarding Officer may suspend further use of a vessel until an especially hazardous condition is corrected. The Coast Guard is proposing to include as an especially hazardous condition, operating a vessel while under the influence of alcohol or drugs to the extent that further operation of the vessel is unsafe. Under this provision, the Coast Guard Boarding Officer could take immediate and reasonable steps including terminating further use of the vessel based upon observed operator intoxication.

Alcohol and Drug Rehabilitation

The Coast Guard believes that the voluntary and successful rehabilitation of seaman who abuse alcohol and drugs will result in a safer marine industry. For that reason, the Coast Guard is proposing amendments to 46 CFR Part 5 to permit a seamen to voluntarily deposit his or her license, certificate, or document while undergoing drug or alcohol rehabilitation. The Coast Guard anticipates that these proposals will encourage alcohol and drug abusers to come forward voluntarily, and will provide an opportunity for other persons to identify drug and alcohol abusers with minimal consequences to the reported on individual.

Under 46 U.S.C. 7704, if it is shown at a hearing that a person has been convicted of a drug offense, the person's license, certificate, or document must be revoked. If the person is shown to be a user of or addicted to drugs, the license, certificate, or document must also be revoked unless the holder provides

satisfactory proof that the holder is cured. There are no similar statutory restraints on the action to be taken when only alcohol is involved.

The Coast Guard is proposing to hold suspension and revocation proceedings in abeyance for persons voluntarily depositing their license, certificate, or document while undergoing a rehabilitation program. Since the voluntary deposit prevents the holder from serving aboard vessels under the authority of the license, certificate, or document, safety is not affected by holding the hearing in abeyance. To further ensure that the program is not abused, it will not be available if: (1) The holder caused or contributed to a casualty; (2) the holder's use of drugs or alcohol was discovered pursuant to an investigation; or (3) the holder has previously voluntarily deposited his or her license, certificate, or document for drug use. The limitation on prior voluntary surrender would not apply to alcohol use.

Under the proposal, the license, certificate, or document would not be returned until the holder demonstrates satisfactory completion of a rehabilitation program and meets the physical and professional requirements for issuance of the license, certificate or document. In cases of drug use, the holder would also be required to demonstrate complete non-association with drugs for six months after completion of the rehabilitation program. For both alcohol and drug involvement, the holder would be required to be participating in a monitoring program.

The Coast Guard also proposes amendments to the regulations concerning the issuance of new licenses. Under current regulations, if a license, certificate, or document is revoked or surrended in lieu of a hearing for simple use or possession of drugs or addiction to alcohol, a new license, certificate, or document will not be reissued in less than three years. The Coast Guard is proposing a waiver of this waiting period upon completion of a rehabilitation program and participation in a monitoring program. For drug offenses, the holder would also be required to demonstrate complete non-association with dangerous drugs for a period of one year after completion of a rehabilitation program.

The Coast Guard is also considering whether to hold suspension and revocation proceedings in abeyance when the holder of a license, certificate or document has been convicted of a simple minor offense involving the use or possession of drugs. If this is adopted, the holder would have to demonstrate complete non-association with drugs for an extended period of time—probably in excess of three years. Under no circumstances would suspension or revocation proceedings be held in abeyance when the conviction involved the sale or transfer of drugs. The Coast Guard is particularly interest in comments on whether the program would be adopted in the final rule and, if so, what conditions or limitations should apply.

Miscellaneous Amendments

In conjunction with the amendments in this proposal the Coast Guard is correcting statutory references and eliminating duplicative provisions contained elsewhere in Titles 33 and 46, Code of Federal Regulations

The codification of Title 46, United States Code, made certain regulations, which this rulemaking is otherwise amending, inconsistent with the statutory citation or requirements. These inconsistencies are being corrected in this rulemaking. They include requirements that casualty reports be submitted within 5 days and that the owner, charterer, managing operator, agent, master, or person in charge of a vessel submit the casualty report.

Regulatory Evaluation

It has been determined that this rulemaking is not a major regulation under Executive Order 12291, however, this rule is considered significant under the Department of Transporation Regulatory Policies and Procedures (44 FR 11034: Feb. 26, 1979). It is expected that the establishment of an intoxication standard, restrictions on alcohol use by crewmembers on commerical vessels and other vessels subject to manning requirements and the provision for terminating the use of certain vessels if the operator is under the influence of an intoxicant will deter a person from operating any vessel, and from acting or attempting to act as crew member on board a commerical vessel while intoxicated. This should prevent some accidents that might otherwise occur. The exact number of accidents prevented is impossible to calculate. The amendments to the casualty reporting system should provide the Coast Guard with better data with which to evaluate the role of alcohol and drugs in vessel casualties and to develop effective information, education and enforcement programs to deal with the problem. These proposed rules do not increase the number of casualty reports and boating accident reports required to be submitted. While there will be some minor costs incurred in obtaining the required information concerning alcohol or drug involvement and reporting this to the Coast Guard, if even one death is prevented, the benefits are greater than the relatively small costs involved. Compliance with these proposed rules will not impose any other cost or burden or seamen or persons operating a vessel. Since these amendments have a minor cost impact and primarily apply to individuals rather than businesses or other small entities, the Coast Guard certifies under the Regulatory Flexibility Act (Pub. L. 96-354) that these amendments will not have a significant impact on a substantial number of small entities. A regulatory evaulation has been prepared for this action, and is contained in the regulatory docket. A copy may be obtained by contacting the Commandant (G-CMC/21) as indicated under "ADDRESSES."

Paperwork Reduction Act

The rules proposed in this document revised information collection requirements in 46 CFR Part 4 and 33 CFR Part 173. The Office of Management and Budget (OMB) has approved the information collection currently required. Control number OMB-2115-0003 has been assigned for casualty reports and control number OMB-2115-0010 has been assigned for boating accident reports. Although the report forms are being changed to reflect specific alcohol or drug involvement in casualties, this is considered merely a clarification of existing reporting requirements and a minor change to the reporting burden.

List of Subjects

33 CFR Part 95

Marine safety, Vessels, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 146

Continental shelf, Marine safety, Occupational safety and Health, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 150

Deepwater ports, Marine safety, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 173

Marine safety, Reporting and recordkeeping, Alcohol and alcoholic beverages, Drugs.

33 CFR Part 177

Marine safety, Recreational vessels, Unsafe conditions, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 4

Administrative practice and procedures, Investigations, Accidents, Marine safety, National Transportation Safety Board, Reporting requirements, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 5

Administrative practice and procedures, Investigations, Administrative law judge, Investigating officer, Seaman, License certificate, Document, Rehabilitation, Administrative hearings, Suspension and revocation, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 26

Marine safety, Penalties, Reporting requirements, Vessels, Naviation (water), Passenger vessels, Fishing vessels, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 35

Cargo vessels, Marine safety, Seaman, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 78

Marine safety, Passenger vessels, Penalties, Reporting requirements, Navigation (water), Alcohol and alcoholic beverages, Drugs.

46 CFR Part 97

Cargo vessels, Marine safety, Reporting requirements, Navigation (water), Penalties, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 109

Continental shelf, Oil and gas exploration, Marine safety, Marine resources, Reporting requirements, Vessels, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 167

Fire prevention, Reporting requirements, Marine safety, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 185

Marine safety, Passenger Vessel, Reporting requirements, Navigation (water), Alcohol and alcoholic beverages, Drugs.

46 CFR Part 196

Marine safety, Oceanographic vessel, Reporting requirements, Navigation (water), Penalties, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 197

Diving, Marine safety, Occupational safety and health, Vessels, Alcohol and alcoholic beverages, Drugs.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Chapter I of Title 33, Code of Federal Regulations and Chapter 1 of Title 46, Code of Federal Regulations as set forth below:

CHAPTER I—[AMENDED]

1. By adding a new Subchapter F—Vessel Operating Regulations to read as follows:

SUBCHAPTER F—VESSEL OPERATING REGULATIONS

PART 95—OPERATING A VESSEL WHILE INTOXICATED

Sec.

Authority: 46 U.S.C. 2302, 3306, 7101, 7301, 77011 and 8105; 49 CFR 1.46(b).

§ 95.001 Purpose.

The purpose of this part is to establish intoxication standards under 46 U.S.C. 2302, which prohibits operation of a vessel while intoxicated, and to prescribe restrictions and responsibilities for personnel serving on vessels required to be manned by licensed, certificated, or documented personnel. This part does not pre-empt enforcement of state laws and regulations concerning operation of a vessel while intoxicated.

§ 95.005 Applicability.

(a) This part is applicable to all commercial vessels operating on waters subject to the jurisdiction of the United States and vessels owned in the United States on the high seas. This includes foreign commercial vessels operating on waters subject to the jurisdiction of the United States.

(b) This part is also applicable to all vessels required by Part F of Subtitle II of Title 46, United States Code to be manned by licensed, or certificated, or documented personnel, whenever a deck and/or engineering watch is being maintained.

§ 95.010 Definition of terms used in this part.

"Alcohol" means any form or derivative of ethyl alcohol (ethanol).

"Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (CFR Part 1308).

"Drug" means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance, and including, but not limited to, controlled substances.

"Intoxicant" means any form of alcohol or drug or combination thereof.

"Vessel owned in the United States" means any vessel documented or numbered under the laws of the United States; and, any vessel (owned by a citizen of the United States) that is not documented or numbered by any nation.

§ 95.015 Standard of intoxication.

An individual is intoxicated when operating a vessel subject to this part when—

(a) The individual has an essential role in the operation of a vessel not subject to the manning requirements of Part F of Subtitle II of Title 46, United States Code including, but not limited to, navigation of the vessel and functioning of the vessel's propulsion system, and is under the influence of an intoxicant to the degree that:

(1) The individual has .10 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech muscular movement, general appearance or behavior is apparent to observation.

(b) The individual is a crewmember, pilot, or watchstander not a regular member of the crew, of a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code and is under the influence of an intoxicant to the degree that:

(1) The individual has .04 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation.

§ 95.017 Determination of intoxication.

(a) A determination of intoxication may be made by the following:

(1) Personal or reported observation of alcohol or drug use;

(2) Personal or reported observation of a person's manner, disposition, speech,

muscular movement, general appearance or behavior; or,

(3) Toxicological methods including breath analysis, urine, or blood sample testing.

(b) Testing may be directed by a Coast Guard law enforcement officer, investigating officer, or any law enforcement officer authorized to obtain a test under State or local law. If an individual refuses to submit to or cooperate in the administration of a timely toxicological test, when directed by a law enforcement officer or investigating officer having reasonble basis for believing the individual to be intoxicated, evidence of the refusal is admissible in any administrative proceeding and the individual will be presumed to have been intoxicated.

(c) The master or person in charge, in addition to those persons identified in paragraph (b) of this section, may direct such testing. Evidence of refusal to submit to or cooperate in the administration of a timely toxicological test is admissible in evidence in any administrative proceeding.

§ 95.020 General operating rules for vessels subject to inspection under Chapter 33 of Title 46 United States Code.

(a) A person may not perform or attempt to perform any scheduled duties as a crewmember within four hours of consuming any alcohol.

(b) Crewmembers on board the vessel shall not be intoxicated at any time while the vessel is operating.

(c) Crewmembers may not consume any intoxicant while on watch or duty except a drug prescribed or authorized by a medical practitioner used at the specified dosage. The prescription or authorization must be based on a good faith judgment, with knowledge of the person's duties, that use of the drug at the specified dosage is consistent with the safe performance of those duties.

(d) If any crewmember cannot perform duties due to compliance with paragraph (a) of this section or is not in compliance with paragraph (b) of this section, the vessel is considered, for purposes of 46 U.S.C. 8101(e), to be deprived of the services of a member of its complement. If the inability or failure to comply is without the consent, fault, or collision of the owner, chartered, managing operator, agent, master, or person in charge of the vessel, the master shall take the action required by 46 U.S.C. 8101(e).

§ 95.022 Prohibitions for vesels subject to manning requirements of Part F of Subtitle II of Title 46, United States Code.

Crewmembers, pilots, or watchstanders not a regular member of the crew on board a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code shall not be intoxicated while the vessel is operating.

§ 95.025 Responsibility for compliance.

The owner, charterer, managing operator, agent, master or person in charge of a vessel to which Part F of Subtitle II of Title 46, United States Code applies, shall execise due diligence to assure compliance with the applicable provisions of this part.

§ 95.030 Penalties.

(a) An individual who is intoxicated when operating a vessel in violation of 46 U.S.C. 2302(c), shall be—

(1) Liable to the United States Government for a civil penalty of not more than $1,000; or,

(2) Fined not more than $5,000, imprisoned for not more than one year, or both.

(b) When an owner, charterer, managing operator, agent, master, or person in charge of a vessel to which Part F of Subtitle II of Title 46, United States Code applies, having actual knowledge, requires or permits an individual to commence service or remain in service if that individual is intoxicated or in violation of §§ 95.002(a), the vessel is considered to be without the services of such an individual. The owner, charterer, managing operator, agent, master or person in charge of the vessel is liable for the appropriate penalties prescribed by Part F due to the deficiency of personnel.

PART 146—[AMENDED]

2. The authority citation for Part 146 continues to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347, 1348; 49 CFR 1.46(z).

3. Section 146.35 is amended by adding a new paragraph (a)(7) to read as follows:

§ 146.35 Written report of casualty.

(a) * * *

(7) Includes information relating to alcohol or drug involvement as specified in the vessel casualty reporting requirements of 46 CFR 4.05–12.

* * * * *

PART 150—[AMENDED]

4. The authority citation for Part 150 continues to read as follows:

Authority: 33 U.S.C. 1231, 1509(a)(b); 49 CFR 1.46.

5. Section 150.711 is amended by adding a new paragraph (b)(9) to read as follows:

§ 150.711 Casualty or accident.

* * * * *

(b) * * *

(9) The vessel casualty reporting requirements relating to alcohol or drug involvement as specified in the vessel casualty reporting requiremens of 46 CFR 4.50–12.

* * * * *

PART 173—[AMENDED]

6. The authority citation for Part 173 is revised to read as follows and all other authority citations within this part are removed:

Authority: 46 U.S.C. 6101 and 12121; 49 CFR 1.46(n)(1).

§ 173.51 [Amended]

7. In § 173.51 paragraph (b) is revised to read as follows:

* * * * *

(b) This subpart does not apply to a vessel subject to inspection under Title 46 U.S.C. Chapter 33.

8. In § 173.57, paragraph (v) is revised to read as follows:

§ 173.57 Casualty or accident report.

* * * * *

(v) The opinion of the person making the report as to the cause of the casualty, including whether or not alcohol or drugs, or both, was a cause or contributed to causing the casualty.

* * * * *

PART 177—[AMENDED]

9. The authority citation for Part 177 is revised to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46(n)(1).

10. Section 177.01 is amended by revising the introductory text to read as follows:

§ 177.01 Purpose and applicability.

This part prescribes rules to implement section 4308 of Title 46 United States Code which governs the correction of especially hazardous conditions on recreational vessels and uninspected passenger vessels on waters subject to the jurisdiction of the United States and, for a vessel owned in the United States, on the high seas, except operators of;

* * * * *

§ 177.03 [Amended]

11. Section 177.03 is amended by removing and reserving paragraph (a).

12. In § 177.05, the introductory text is revised to read as follows:

§ 117.05 Action to correct an especially hazardous condition.

An operator of a boat who is directed by a Coast Guard Boarding Officer to take immediate and reasonable steps necessary for the safety of those aboard the vessel, under section 4308 of Title 46, United States Code, shall follow the direction of the Coast Guard Boarding Officer, which may include direction to:

* * * * *

13. Section 177.07 is amended by revising the introductory text and paragraphs (b) and (c) to read as follows:

§ 177.07 Other unsafe conditions.

For the purpose of section 4308 of Title 46, United States Code, "other unsafe condition" means a boat:

* * * * *

(b) That is operated by an individual who is apparently under the influence of an intoxicant, as defined in § 95.010 of this chapter, to the extent that, in the boarding officer's discretion, the continued operation of the vessel would create an unsafe condition.

(c) Has a fuel leakage from either the fuel system or engine, or has an accumulation of fuel in the bilges.

* * * * *

PART 4—[AMENDED]

14. The authority citation for Part 4 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2306, 6101, 6301, 6305, 50 U.S.C. 198; 49 CFR 1.46 (b) and (z), except subpart 4.40 for which the authority is: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46(n)(10)(i).

15. Subpart 4.03 is amended by adding § 4.03–35 to read as follows:

§ 4.03–35 Nuclear vessel.

The term "nuclear vessel" means any vessel in which power for propulsion, or for any other purpose, is derived from nuclear energy; or any vessel handling or processing substantial amounts of radioactive material other than as cargo.

6. Subpart 4.05 is amended by revising § 4.05–10 and adding §§ 4.05–12 and 4.05–35 and to read as follows:

Subpart 4.05—Notice of Marine Casualty and Voyage Records

* * * * *

§ 4.05–10 Written report of marine casualty.

(a) In addition to the notice required by § 4.05–1, the owner, charterer, managing operator, agent, master, or person in charge of a vessel shall, within five days, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or the nearest port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. The Form CG–2692A (Barge Addendum) may be used as needed and appended to Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 4.05–1.

§ 4.05–12 Alcohol or drug involvement.

(a) For each casualty required to be reported by § 4.05–10, the owner, charterer, managing operator, agent, master, or person in charge of the vessel shall determine whether there is any alcohol or drug involvement by persons directly involved in the casualty.

(b) The owner, charterer, managing operator, agent, master, or person in charge of the vessel shall include in the written report, Form CG–2692, submitted for the casualty information which:

(1) Identifies each person determined to be intoxicated; and,

(2) The method used to make this determination, such as by personal or reported observation of alcohol or drug use, personal or reported observation of the individual, or by toxicological testing.

(c) An entry shall be made in the official log book pertaining to those individuals determined to be under the influence of alcohol or drugs.

(d) The refusal to submit to a toxicological test to determine the degree of impairment from either alcohol or drug use when required to do so by the person in charge of the vessel, a Coast Guard official, or any law enforcement official authorized to conduct said test(s) under Federal, State, or local law for intoxication, shall be noted in the official log book, if carried, and in the written report and shall be admissible as evidence of intoxication in administrative hearings.

* * * * *

§ 4.05–35 Incidents involving nuclear vessels.

The master of any nuclear vessel shall immediately inform the Commandant in the event of any accident or casualty to the nuclear vessel which may lead to an environmental hazard. The master shall also immediately inform the competent governmental authority of the country in whose waters the vessel may be or whose waters the vessel approaches in a damaged condition.

PART 5—[AMENDED]

17. The authority citation for Part 5 continues to read as follows:

Authority: 46 U.S.C. 7101, 7310, 7701; 50 U.S.C. 198; 49 CFR 1.46(b).

18. Subpart E is amended by revising § 5.201 and adding § 5.205 to read as follows:

Subpart E—Deposit or Surrender of License, Certificate, or Document

§ 5.201 Voluntary deposits in event of mental or physical incompetence.

(a) A holder may deposit a license, certificate, or document with the Coast Guard in any case where there is evidence of mental or physical incompetence. A voluntary deposit is accepted on the basis of a written agreement, the original of which will be given to the holder, which specifies the conditions upon which the Coast Guard will return the license, certificate, or document to the holder.

(b) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use of or addiction to dangerous drugs, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bonafide drug rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty;

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, state, or local government investigation; and

(4) The holder has not voluntarily deposited or surrendered a license, certificate, or document, or had a license, certificate or a document revoked for a drug related offense on a prior occasion.

(c) Where the mental or physical incompetence of a holder of a license, certificate, or document is caused by use or addiction to alcohol, a voluntary deposit will only be accepted contingent on the following circumstances:

(1) The holder is enrolled in a bonafide alcohol rehabilitation program;

(2) The holder's incompetence did not cause or contribute to a marine casualty; and

(3) The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, state, or local government investigation.

(d) Where the conditions of paragraphs (b) and (c) of this section are not met, the holder may only surrender such license, certificate or document in accordance with § 5.203.

* * * * *

§ 5.205 Return of Papers or Issuance of New Papers.

(a) A person may request the return of a voluntarily deposited license, certificate, or document at any time, provided he or she can demonstrate a satisfactory rehabilitation or cure of the condition which caused the incompetence; has complied with any other conditions of the written agreement executed at the time of deposit; and complies with the physical and professional requirements for issuance of a license, certificate, or document.

(b) Where the voluntary deposit is based on incompetence due to drug abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(1) Successfully completes a bonafide drug abuse rehabilitation program;

(2) Demonstrates complete non-association with dangerous drugs for a minimum of six months after completion of the rehabilitation program; and

(3) is actively participating in a bonafide drug monitoring program.

(c) Where the voluntary deposit is based on incompetence due to alcohol abuse, the deposit agreement shall provide that the license, certificate, or document will not be returned until the person:

(1) Successfully completes a bonafide alcohol abuse rehabilitation program; and

(2) Is actively participating in a bonafide monitoring program similar to Alcoholics Anonymous.

(d) The voluntary surrender of a license, certificate, or document is the equivalent of the revocation of such papers. A holder who voluntarily surrenders such papers must comply with provisions of § 5.901 and § 5.903 when applying for the issuance of new papers.

19. Subpart L is amended by adding paragraphs (d), (e), and (f) to § 5.901 to read as follows:

Subpart L—Issuance of New Licenses, Certificates or Documents After Revocation or Surrender

§ 5.901 Time limitations.

* * * * *

(d) For a person whose license, certificate, or document has been revoked or surrendered for the wrongful simple possession or use of dangerous drugs, the three year time period may be waived by the Commandant upon a showing that the individual:

(1) Has successfully completed a substance abuse rehabilitation program;

(2) Has demonstrated compete non-association with dangerous drugs for a minimum of one year following completion of the rehabilitation program; and

(3) Is actively participating in a bonafide drug monitoring program.

(e) For a person whose license, certificate, or document has been revoked or surrendered for offenses related to alcohol abuse, the waiting period may be waived by the Commandant upon a showing that the individual has successfully completed an alcohol abuse rehabilitation program and is actively participating in a bonafide monitoring program similar to Alcoholics Anonymous.

(f) The waivers specified under subparagraphs (d) or (e) of this section may only be granted once to each person.

PART 26—[AMENDED]

20. The authority citation for Subpart 26.08 is revised to read as follows:

Authority: 46 U.S.C. 6101; 46 CFR 1.46(b).

21. Subpart 26.08 is revised to read as follows:

Subpart 26.08—Notice and Reporting of Casualty and Voyage Records

§ 26.08-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 35—[AMENDED]

22. The authority citation for Part 35 continues to read as follows:

Authority: 46 U.S.C. 3306 and 3703; 49 CFR 1.46.

23. Subpart 35.15 is revised to read as follows:

Subpart 35.15—Notice and Reporting of Casualty and Voyage Records

§ 35.15-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 78—[AMENDED]

24. The authority citation for Subpart 78.07 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

25. Subpart 78.07 is revised to read as follows:

Subpart 78.07—Notice and Reporting of Casualty and Voyage Records

§ 78.07-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 97—[AMENDED]

26. The authority citation for Part 97 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

27. Subpart 97.07 is revised to read as follows:

Subpart 97.07—Notice and Reporting of Casualty and Voyage Records

§ 97.07-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 109—[AMENDED]

28. The authority citation for Part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46 (b) and (n)(6).

29. Subpart D of Part 109 is amended by removing §§ 109.413 and 109.417 and revising § 109.411 to read as follows:

§ 109.411 Notice and reporting of casualty.

The requirements for providing notice and reporting of marine casualties are contained in Part 4 of this chapter.

PART 167—[AMENDED]

30. The authority citation for Part 167 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Section 167.65-65 is revised to read as follows:

§ 167.65-65 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 185—[AMENDED]

32. The authority citation for Part 185 is revised to read as follows and all other authority citations in the Part are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

33. Subpart 185.15 is revised to read as follows:

Subpart 185.15—Notice and Reporting of Casualty and Voyage Records

§ 185.15-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 196—[AMENDED]

34. The authority citation for Part 196 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

35. Subpart 196.07 is revised to read as follows:

Subpart 196.07—Notice and Reporting of Casualty and Voyage Records

§ 196.07-1 Notice and reporting of casualty and voyage records.

The requirements for providing notice and reporting of marine casualties and for retaining voyage records are contained in Part 4 of this chapter.

PART 197—[AMENDED]

36. The authority citation for Part 197 is revised to read as follows:

Authority: 33 U.S.C. 1509(b); 43 U.S.C. 1333; 46 U.S.C. 3306, 6101; 49 CFR 1.46 (b) and (s).

37. Section 197.486 is amended by adding paragraph (d) to read as follows:

§ 196.486 Written report of casualty.

* * * * *

(d) The report required by this section must include information relating to alcohol and drug involvement as required by § 4.05-12 of this chapter.

Dated: May 19, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 86-11590 Filed 5-22-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL-3020-1; OPP-300144A]

Pesticide Tolerance for Daminozide; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period on a proposal to reduce, on an interim basis, the existing tolerance for the herbicide daminozide [butanedioic acid mono [2, 2-dimethylhydrazide)] in or on the raw agricultural commodity apples. The National Resources Defense Council requested the extension.

DATE: Comments, identified by the document control number (OPP-300144A), must be received on or before May 27, 1986.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued, in the **Federal Register** of April 16, 1986 (51 FR 12889), a proposed rule to amend 40 CFR 180.246 by reducing the tolerance for residues of daminozide in or on apples from 30 ppm to 20 ppm on an interim basis, with the tolerance to expire on July 31, 1987. The comment period was 30 days—the expiration date being May 16, 1986.

The National Resources Defense Council, 25 Kearny St., San Francisco, CA, has requested additional time to prepare comments responding to the proposed rule. EPA is granting this request for extension of the comment period.

Therefore, the proposed amendment to 40 CFR 180.246 *Daminozide; tolerances for residues,* published in the **Federal Register** of April 16, 1986 (51 FR 12889), is modified to extend the comment period to May 27, 1986.

(21 U.S.C. 346a)

Dated: May 16, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 11655 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery; Availability of Fishery Management Plan and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues notice that the New England Fishery Management Council (Council) has resubmitted a Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for Secretarial review and is requesting comments from the public. Copies of the plan may be obtained from the address below.

DATE: Comments on the plan should be submitted on or before June 20, 1986.

ADDRESS: All comments should be sent to Mr. Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on the Multispecies FMP."

FOR FURTHER INFORMATION CONTACT: Peter Colosi, Groundfish Coordinator, 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*) requires that each fishery management council submit any fishery management plan it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan, must immediately publish a notice that the plan is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan.

This plan will replace the Interim FMP for Atlantic Groundfish and proposes to: (1) Establish new minimum size regulations for seven major commercial species; (2) establish minimum sizes for

recreationally caught cod and haddock; (3) implement major extensions of closed spawning areas on Georges Bank; (4) establish a closed area in Southern New England to enhance yellowtail flounder spawning potential; (5) make major changes in the regulations governing small mesh fisheries; (6) implement a major increase in the mesh size of mobile trawl gear; (7) establish a marking requirement for gillnet gear; and (8) increase the spawning potential for redfish.

Regulations proposed by the Council and based on this plan are scheduled to be published within 10 days.

(16 U.S.C. 1801 *et seq.*)

Dated: May 19, 1986.

Richard B. Roe,

Director, Office of Fisheries Management.

[FR Doc. 86-11656 Filed 5-20-86; 3:29 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative Agreement: Iowa State University

AGENCY: Office of International Cooperation and Development, USDA.
ACTION: Notice of intent to enter into a cooperative agreement.

ACTIVITY: The Office of International Cooperation and Development intends to enter into a cooperative agreement with Iowa State University to carry out research and technical services related to improving the data bases and capacity for undertaking consumption effects analyses in low income countries.

Authority

Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development announces the availability of funds during Fiscal Year 1986 to enter into a cooperative agreement with Iowa State University to carry out research and technical services related to improving the data bases and capacity for undertaking consumption effects analyses in low income countries. The purpose of this agreement is to cooperatively plan and then collaboratively develop a series of handbooks which can be used as references for training analysts in developing countries on how to process and edit income and expenditure and consumption survey data, and how and when to apply selected analytical techniques to such data to answer important food and nutrition policy questions. This work will be carried out in two stages. Stage one activities will include: (a) Planning the handbook series; (b) establishing an advisory committee; and (c) preparing and reviewing sample chapters. Implementation of stage two—handbooks—will depend on the availability of funds as well as the amount of interest generated by the output from stage one.
handbooks—will depend on the availability of funds as well as the amount of interest generated by the output from stage one.

This is a joint activity which is part of a program of activities designed to assist developing countries improve their data bases and capabilities for undertaking consumption effects analyses. Iowa State University is already successfully collaborating with this Agency in several efforts in this area and will be able to build upon as well as generalize from these experiences in the development of these handbooks.

Based on the above, this is not a formal request for applications. It is estimated that approximately $30,000 will be available during Fiscal Year 1986 to carry out stage one. Development of the handbooks, themselves, is expected to be founded over a period of years—the exact number of years and amounts dependent on fund avaibility and future decision with respect to the number of handbooks of be developed.

Information may be obtained from: Ms. Roberta van Haeften, Nutrition Economics Group, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture, (58–319R–6–027).

Dated: May 1, 1986.

Nancy J. Croft,

Contract Specialist, Management Services Branch, OICD.

[FR Doc. 86–11631 Filed 5–22–86; 8:45 am]

BILLING CODE 3410–DP–M

Agricultural Marketing Service

Renewal of the National Advisory Committee for Tobacco Inspection Services

Notice is hereby given that the Secretary of Agriculture has renewed the National Advisory Committee for Tobacco Inspection Services for an additional period of two years.

This Committee advises the Secretary of the level of services needed under the Tobacco Inspection Act and the establishment of fees and charges to recover the cost of such services.

The Committee consists of 14 producers of tobacco representing all production areas, and shall meet at the call of the Secretary.

The authority for this Committee is Section 5 of the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*).

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App. I).

Dated: May 15, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–11619 Filed 5–22–86; 8:45 am]

BILLING CODE 3410–02–M

National Advisory Committee for Tobacco Inspection Service; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: June 9, 1986.

Time: 1 p.m.

Place: U.S. Department of Agriculture, Agricultural Marketing Service, Tobacco Division, Training Laboratory, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*), to hear from individuals who have requested to address the Committee and who have been prescheduled to do so, and to discuss the level of tobacco inspection and related services, that is, the number of sets of graders for the flue-cured and burley markets, and the fees and charges associated with providing these services.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee Chairperson. Persons, other than members, who wish to address the Committee at the meeting are requested to contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Room 502 Annex Building, Washington, DC 20250, (202) 447–2567.

Dated: May 21, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–11848 Filed 5–22–86; 10:50 am]

BILLING CODE 3410–02–M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission previously scheduled for May 23, 1986, convening at 9:00 a.m. and adjourning at 5:00 p.m., at the Federal Building, Room C–114, 701 "C" Street, Anchorage, Alaska (FR Doc. 86–10796, Page 17662) has a new room number.

The meeting date, location, convening and adjourning times will remain the same. The room number of the meeting will change to Room F–278.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–11643 Filed 5–22–86; 8:45 am]

BILLING CODE 1335–01–M

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 6:30 p.m. on June 6, 1986, at the Holiday Inn Downtown, International Room, 175 Piedmont Avenue NE., Atlanta, Georgia. The purpose of the meeting is to discuss and formulate results of community forum on the status of working women in Georgia and to plan activities for FY 86–87.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John Ruffin or Bobby Doctor Director of the Southern Regional Office at (404) 221–4391, (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–11644 Filed 5–22–86; 8:45 am]

BILLING CODE 6335–01–M

Illinois Advisory Committee, Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on June 13, 1986, at the U.S. Commission on Civil Rights, Room, 3280, 230 S. Dearborn Street, Chicago, Illinois. The purpose of the meeting is to plan for the upcoming community forum on the civil rights of hearing-impaired people.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzberg or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86–11645 Filed 5–22–86; 8:45 am]

BILLING CODE 6335–01–M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on May 29, 1986, at the Galt House, Corn Island Room, 4th Street at River Road, Louisville, Kentucky. The purpose of the meeting is to review, for approval, the draft of the briefing memorandum regarding the desegregation of public housing in Louisville and Lexington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter Peeples or Bobby Doctor Director of the Southern Regional Office at (404) 221–4391, (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Program Specialist for Regional programs.

[FR Doc. 86–11646 Filed 5–22–86; 8:45 am]

BILLING CODE 6335–01–M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on June 19, 1986, at the Sheraton Oaks, 27000 Sheraton Drive, Novi, Michigan. The purpose of the meeting is to discuss the status of civil rights in Michigan and plan for Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Tobias or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting .

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86–11647 Filed 5–22–86; 8:45 am]

BILLING CODE 6335–01–M

North Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on June 11, 1986, at the University Sheraton, Room 1005, 2800 Middleton Avenue, Durham, North Carolina. The purpose of the meeting is to discuss the revised concept for the

proposed public school desegregation project, and the proposal. In addition, the committee will provide an update on the status of the briefing memorandum on State employment.

Person desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Horowitz or Bobby Doctor, Director of the Southern Regional Office at (404)221–4391, (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–11648 Filed 5–22–86; 8:45 am]

BILLING CODE 6335–01–M

Washington Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on June 4, 1986, at the Henry M. Jackson Federal, Room 1848, 915 Second Avenue, Seattle, Washington. A factfinding meeting will be held on Indian education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Arnold Manseth or Susan McDuffie Director of the Northwestern Regional Office at (206)442–1246, (TDD 206/442–4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–11649 Filed 5–22–86; 8:45 am]

BILLING CODE 6335–01

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Caribbean Basin Initiative Export Declaration

Form Number: Agency—ITA–370; OMB–N/A

Type of Request: New Collection

Burden: 200 respondents; 3,200 reporting hours

Needs and Uses: On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products made form fabric formed and cut in the United States. Firms participating in the Caribbean Basin Initiative program must certify that the textile products assembled meet the criteria of the program. The Customs Service will use the information provided to conduct audits and detect fraud

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit Sheri Fox, 395–3785

Agency: International Trade Administration

Title: Worldwide Services Program

Form Number: Agency—ITA–4099P; OMB—0625–0127

Type of Request: Required to obtain or retain a benefit

Burden: 200 respondents; 67 reporting hours

Needs and Uses: Information collected from firms is used to promote their services overseas through U.S. consular posts. The information obtained is disseminated to potential buyers/agents overseas through direct mail or commercial newsletters prepared by the posts

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: May 19, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–11616 Filed 5–22–86; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–580–507]

Antidumping Duty Order; Malleable Cast Iron Pipe Fittings, Other Than Grooved, From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning malleable cast iron pipe fittings, other than grooved (pipe fittings), from Korea, the United States Department of Commerce (the Department) and the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that pipe fittings from Korea are being sold at less than fair value and that sales of pipe fittings from Korea are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of pipe fittings from Korea made on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro or Mary Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5332 or (202) 377–1769.

SUPPLEMENTARY INFORMATION: The products covered by this order are malleable cast iron pipe fittings, other than grooved, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.7000, and 610.7400.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 14, 1986, the Department published its preliminary determination that there was reason to believe or suspect that pipe fittings from Korea are being sold at less than fair value (51 FR 1546). On March 31, 1986, the Department published its final determination that these imports are being sold at less than fair value (51 FR 10900).

On May 12, 1986, in accordance wtih section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry. Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipe fittings from Korea. Antidumping duties will be assessed on all unliquidated entries of pipe fittings from Korea entered, or withdrawn from warehouse, for consumption on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (15 FR 1546).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 12.48 percent. This rate is applicable to all pipe fittings imported from Korea.

This determination constitutes an antidumping duty order with respect to pipe fittings from Korea, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 19, 1986.

[FR Doc. 86-11681 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-507]

Antidumping Duty Order: Malleable Cast Iron Pipe Fittings, Other Than Grooved, From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning malleable cast iron pipe fittings, other than grooved (pipe fittings), from Taiwan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that pipe fittings from Taiwan are being sold at less than fair value and that sales of pipe fittings from Taiwan are materially injuring a United States industry. Additionally, the Department found that "critical circumstances" do not exist with respect to pipe fittings from Taiwan. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of pipe fittings from Taiwan made on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro or Mary Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5332 or (202) 377-1769.

SUPPLEMENTARY INFORMATION: The products covered by this order are malleable cast iron pipe fittings, other than grooved, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.7000, and 610.7400.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C 1673b), on January 14, 1986, the Department published its preliminary determination that there was reason to believe or suspect that pipe fittings from Taiwan are being sold at less than fair value (51 FR 1547). We preliminary determined that "critical circumstances" do not exist within the meaning of section 733(e) of the Act (19 U.S.C. 1673(e)). On March 31, 1986, the Department published its final determination that these imports are being sold at less than fair value and that "critical circumstances" do not exist with respect to pipe fittings from Taiwan (51 FR 10901).

On May 12, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipe fittings from Taiwan. Antidumping duties will be assessed on all unliquidated entries of pipe fittings from Taiwan entered, or withdrawn from warehouse, for consumption on or after January 14, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** 51 FR 1547).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below.

Manufacturers/producers/exporters	Weighted-average percent
San Yang	58.57
De Ho	13.12
Tai Yang	37.09
Kwang Yu	7.93
Young Shieng	80.00
All others	44.87

This determination constitutes an antidumping duty order with respect to pipe fittings from Taiwan, pursuant to

section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 19, 1986.

[FR Doc. 86-11682 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-507-502]

Certain In-Shell Pistachios From Iran Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain in-shell pistachios (pistachios) from Iran are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue with the suspension of liquidation of all entries of pistachios from Iran that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the date of this determination, whether these imports are materially injuring, or are threatening material injury to, a U.S. industry.

EFFECTIVE DATE: May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro (202-377-5332) or Mary S. Clapp (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that in-shell pistachios from Iran are being, or are likely to be sold, in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). We found that all sales during the period of investigation were at less than fair value, and the weighted-average margin is 241.14 percent. We have determined that "critical circumstances" exist with respect to raw in-shell pistachios from Iran.

Case History

On September 26, 1985, we received a petition filed in proper form from the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Kern Pistachio Hulling & Drying Co-op., Los Rancho de Poco Pedro, Pistachio Producers of California, and T.M. Duche' Nut Co., Inc., on behalf of the industry consisting of domestic pistachio growers and processors of domestically grown pistachios. In compliance with the filing requirements of § 353.36 of the Commerce regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Iran are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673) and that these imports are materially injuring, or threatening material injury to, a U.S. industry. The petitioners also alleged that "critical circumstances" exist with respect to raw pistachios.

After reviewing the petition we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on October 15, 1985 (50 FR 42978), and notified the ITC of our action.

On November 12, 1985, the ITC found that there is a reasonable indication that imports of pistachios from Iran are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1777, November 1985).

On October 25, 1985, we presented a questionnaire to the Rafsanjan Pistachio Cooperative, the only known seller of pistachios from Iran. On January 10, 15, and 24, 1986, we received responses to our questionnaire. By letter dated January 30, 1986, we informed the Embassy of Algeria that the information it submitted to us on behalf of the Government of Iran was inadequate for purposes of a preliminary determination since the respondent did not know the destination of the pistachios it sold. On January 30, 1986, the Department sent questionnaires to the Rafsanjan Pistachio Cooperative to be forwarded to its customers who export pistachios to the United States. We did not receive any further responses.

We published the preliminary determination of sales at less than fair value on March 11, 1986 (51 FR 8342). A hearing, requested by the petitioners and importers, was held on April 8, 1986. Arguments raised in the briefs of all parties were considered for the final determination.

Scope of Investigation

The products covered by this investigation are certain raw and roasted in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and the edible meat, currently classifiable in the Tariff Schedules of the United States Annotated (TSUSA) under items 145.2600 and 145.5300. The period of investigation is April 1 through September 30, 1985.

Scope of Investigation Issues

In the present investigation questions arose at the time of the Department's preliminary determination as to whether roasted in-shell pistachios were included within the scope of its investigation. It was brought to the Department's attention that the TSUSA item included in its notices, 145.2600, covered only one variety of in-shell pistachios, raw, that was being imported into the United States. Inasmuch as the Department seeks to include all products that are of the same class or kind within the scope of its investigations as are necessary to ensure that it investigates all imports that may be sold within the United States at less than fair value, we requested comments to help in determining whether the Department's intent to include roasted in-shell pistachios within its scope was made apparent throughout the investigation. In addition, we requested comments on the issue of whether roasted in-shell pistachios are within the same class or kind as raw in-shell pistachios and as such, properly within the scope of this investigation.

Importers of raw in-shell pistachios from Iran argued (1) that prior notices have specifically referred to in-shell pistachios provided for under TSUSA item 145.2600 and (2) the ITC limited its preliminary determination to raw in-shell pistachios. The principal importer of roasted in-shell pistachios from Iran, who accounted for eighty percent of the imports of such pistachios from September through December 1985, argued (1) that its imports were not an

attempt at circumvention and there is little possibility of substantial circumvention in the future because of the limited roasting facilities in Europe, where the roasting is done, and (2) that since it has relied on prior determinations and notices, with respect to roasted in-shell pistachios from Iran, to include such pistachios in the scope of the investigation at this time would be an unfair denial of due process.

The importers of raw in-shell pistachios and the importer of roasted in-shell pistachios argue (1) that the Department's determinations of product scope in other investigations do not support inclusion of roasted pistachios in this investigation, and (2) that the roasted in-shell pistachios were previously sold in the free market of Europe and therefore are exports from Europe.

In-shell pistachios are marketed as a snack food and are generally roasted for this purpose. Thus the ultimate use of roasted and raw in-shell pistachios, as well as the expectations of the consumer, are the same for the two products. Additionally, both products are part of the same channel of trade, the end purpose of which is to provide for consumption a roasted edible nut. Roasting of raw in-shell pistachios is not a substantial transformation of that product since roasting is essentially a preparation of the product for use as a snack food. Though the Department is not bound by Customs Service determinations regarding substantial transformation, we note that in its notice of September 18, 1985, *Country of Origin Markings for Pistachio Nuts* (50 FR 37842), the Customs Service found roasting not to be a substantial transformation. The Customs Service also found that the cost of transforming raw in-shell pistachios to roasted in-shell pistachios was insignificant, the process costing 2.5 cents to 3 cents per pound. Based upon these reasons, the Department has determined that roasted and raw in-shell pistachios are within the same class or kind.

The Department further notes that it has never limited the scope in the investigation to raw in-shell pistachio nuts. The Department recognized the need to clarify the scope in this case because of its use of the single TSUSA item 145.2600 in its notices. TSUSA items serve as aids in describing products under investigation but are not binding upon the Department in scope determinations. In fact, the Department may add an item number to cover a product under investigation where the omission of that item would be inconsistent with the products under investigation.

With respect to the parties' point regarding country of exportation, the Department considers pistachios grown in Iran as products of Iran, whether or not they have been sold or roasted in the European market. Both parties have referred to section 773(g) of the Tariff Act of 1930, as amended. That provision deals with the exportation from an intermediate country. That provision states that if a reseller purchases merchandise from a producer who does not know at the time of the sale the destination of the merchansise, and that merchandise is initially exported by or on the behalf of the reseller to a country other than the United States, where it is not substantially transformed, and the merchandise is subsequently exported to the United States, that merchandise will be treated for purposes of that section, which deals with foreign market value, as an export from that intermediate country.

The provision is not relevant to the issue of whether in-shell pistachios are properly classified as products of Iran. The provision provides that the intermediate country will be considered as the country of exportation for foreign market value calculations. In *Synthetic Methionine from Japan* (47 FR 15622, April 12, 1982), an administrative review two years before the provisions was added to the antidumping law, the Department explained its policy at that time with regard to intermediate country exportation as not removing certain products from the scope of a proceeding because they were exported from a third country. Accordingly, the Department does not consider roasted in-shell pistachios as imports from Europe for purposes of the scope of these proceedings.

Regarding the allegation of the importer of roasted in-shell pistachios that it was denied due process, we note that all interested parties were aware that the Department was considering clarification of the scope regarding roasted in-shell pistachios shortly after the preliminary determination. At that time the only known importer of roasted in-shell pistachios entered appearance as an interested party and had the opportunity to comment upon all aspects of the investigation, including matters not involving scope.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with foreign market value, also based on the best information available. We used the best information available, as required by section 776(b) of the Act, because appropriate responses were not submitted.

United States Price

For our determination we did not use sales data presented by respondents to calculate United States price since they did not include data regarding specific quantities and prices for pistachios sold for export to the United States. We determined United States price on the basis of the average F.A.S. value for the six-month period of investigation as derived from the IM145 statistics compiled by the Bureau of Census.

Foreign Market Value

We used price information provided in the petition, as the best information available, pursuant to section 776(b) of the Act since we did not have specific data regarding quantities and prices for pistachios sold in the home market. The price information used from the petition was the price for a representative grade in May 1985.

Petitioners' Comment

Comment: Petitioners argue that, for the preliminary determination, the Department inadvertently based foreign market value on an average price for the period March 1984 to March 1985, instead of the price of a representative grade in May 1985.

DOC Response: We agree. Foreign market value for the final determination is based on the May 1985 price of a representative grade within the period of review.

Importers' Comment

Comment: Importers argue that the sales price of in-shell pistachios in Iran was converted to U.S. dollars at an improper rate of exchange. The law requires that such conversion be made at a rate which reflects the actual market value of the currency and not at the rate proclaimed by the foreign government when that rate has no relation to the actual value of the currency. Further, the law does not contemplate that agencies of the U.S. government blindly accept values reported by the Federal Reserve Bank when there is evidence that the reported rate is grossly overstated or understated.

DOC Response: Section 522 of the Trade Act of 1930 requires the Department to use the exchange rate furnished by the Federal Reserve Bank of New York. The applicable regulation and statutory provision do not grant the

Department the authority to disregard exchange rate information furnished by the Federal Reserve Bank of New York.

Verification

Verification in accordance with section 776(a) of the Act was not conducted since timely and complete responses were not filed.

Final Affirmative Determination of Critical Circumstances

Petitioners have alleged that imports of certain raw in-shell pistachio nuts present "critical circumstances" within the meaning of section 735(a)(3) of the Act. Critical circumstances exist when the Department finds that: (a) There is a history of dumping in the United States or elsehwere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known tht the exporter was selling the merchandise under investigation at less than its fair value; and (c) there have been massive imports of merchandise under investigation over a relatively short period. In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of the first two of these three factors, we have determined that imports from Iran have been massive.

In determining whether there is a history of dumping of pistachios from Iran, in the United States or elsewhere, we reviewed past antidumping findings of the Department of Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries made available through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no final determination on pistachios from Iran. Therefore, we did not find the requisite history of dumping of the class or kind of merchandise.

The second criterion is whether the importers knew, or should have known, that the exporter was selling the merchandise at less than fair value. We normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the margin in this case exceeds this level, we find that knowledge of sales at less than fair value can be imputed to the importers.

For the reasons described above we determine that critical circumstances exist with respect to raw in-shell pistachios from Iran. Since, however, there was no allegation of critical circumstances for roasted in-shell pistachios we did not make such a determination for roasted in-shell pistachios.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of raw in-shell pistachios from Iran that are entered, or withdrawn from warehouse, for consumption, on or after December 11, 1985. Suspension of liquidation shall be continued for all entries of roasted in-shell pistachios from Iran that are entered, or withdrawn, from warehouse, for consumption on or after March 11, 1986, the date of publication of the preliminary determination (51 FR 8342). The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. In the case of in-shell pistachios from Iran the rate is 241.14 percent. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement of Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on pistachios from Iran will be subtracted from the dumping margin for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on pistachios from Iran which were entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price, less the amount of the countervailing duty.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

May 19, 1986.

[FR Doc. 86-11683 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision of Application for Duty-Free Entry of Scientific Instrument; Columbia University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-285. Applicant: Columbia University, New York City, NY 10027. Instrument: Stereomicroscope, Model M5A with accessories. Manufacturer: Leitz (Wild-Heerbrugg), Switzerland. Intended use: See notice at 50 FR 41380.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides high imaging clarity and a large transmitted light base. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or

apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11690 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; U.S. Geological Survey

This decision is make pursant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-172R. Applicant: U.S. Geological Survey, Lawrence, KS 66046. Manufacturer: Geonics Limited, Canada. Instrument: Terrain Conductivity Meter. Original notice of this resubmitted application was published in the **Federal Register** of June 11, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of in situ conductivity measurements under varying climatic and geological conditions such as the capability of measuring ground conductivity in the presence of inhomogeneous localized resistivity. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11691 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Harvard University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-190. Applicant: Harvard University, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: Electron Microscope, Model JEM-1200EX/SEG with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used for the study of the ultrastructure of white blood cells, cells derived from blood vessels, tumor cells and kidney tissues. The experiments to be conducted include but are not limited to studies of:

(1) Cytoskeletal characteristics of resting and stimulated leukocytes.

(2) Cytoskeletal characteristics of cells from blood vessels.

(3) Characterization of the lysosomal system in vascular smooth muscle cells.

(4) Characterization of the non-lysosomal acid-hydrolase-containing compartment in vascular smooth muscle cells.

(5) Morphological component of the effect of heparin on cells from blood vessels.

(6) Organization of "artificial blood vessels" in tissue culture.

(7) Morphology and cytochemical changes in a drug-induced model of kidney damage.

Application Received by Commissioner of Customs: April 18, 1986.

Docket No. 86-194. Applicant: University of Wisconsin-Milwaukee, Department of Biological Sciences, Lapham Hall, Room 252, P.O. Box 413, Milwaukee, WI 53201. Instrument: Electron Microscope, Model H-600 CR/CR with Accessories. Manufacturer: Hitachi, Japan. Intended use: The instrument is intended to be used to perform research on a variety of biological specimens, e.g., membrane formation in facultative photosynthetic bacteria, replication of DNA synthesis in the F plasmid in *Escherichia coli*, factors that affect the immune response in fish, and regulation of gene expression in two model systems, the developmentally regulated synthesis of a protein, globin, in the insect *Chironomous thummi*, and the regulation of the synthesis of ribosomal components in somatic cell hybrids. In addition, the instrument will be used for class instruction for undergraduate and graduate student research at the master's and doctoral level. Application Received by Commissioner of Customs: April 23, 1986.

Docket No. 86-195. Applicant: Calcilex Corporation, 10605 Carnegie Avenue, Cleveland, OH 44106. Instrument: Kidney Lithotripter. Manufacturer: Dornier, West Germany. Intended use: The instrument is intended to be used to conduct research concerning the clinical efficacy, morbidity and mortality and the cost of effectiveness of extracorporeal shock wave lithotripsy and alternative therapies in the treatment and management of urinary calculi. The instrument will also be used in the training and education of physicians, resident surgeons in post-graduate training, medical students, and allied health care personnel. Application Received by Commissioner of Customs: April 23, 1986.

Docket No. 86-196. Applicant: Pomona Valley Community Hospital, Ltd., 1798 North Garey Avenue, Pomona, CA 91767. Instrument: Kidney Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended use: The instrument is intended to be used to treat patients with kidney stone disease, to research and develop further guidelines for its use and to train physicians, nurses and other ancillary medical personnel in the applications of extracorporeal shock-wave lithotripsy as a less risky and less costly alternative to the removal of kidney and urinary tract stones. Application Received by Commissioner of Customs: April 25, 1986.

Docket No. 86-198. Applicant: The Medical College of Wisconsin, 8701 Watertown Plank Road, Milwaukee, WI 53226. Instrument: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi, Ltd., Japan. Intended use: The instrument will be used to study the ultrastructural morphology of tissues and cell cultures derived from various regions of the eye,

infection, in inflammatory conditions and after exposure to potentially toxic substances. In animal models of vitreoretinal pathology and glaucoma, the morphology of the retina and the optic nerve will be studied. In all investigations, the ultrastructure of both the cellular and the extracellular matrix constituents will be examined. Application Received by Commissioner of Customs: April 30, 1986.

Docket No. 86–199. Applicant: University of Medicine and Dentistry of New Jersey, Rutgers Medical School, Department of Anatomy, P.O. Box 101, Piscataway, NJ 08854. Instrument: Electron Microscope, Model CM 12/STEM with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used for studies of the individual molecules (gangliosides) and mediators of neuritogenesis in order to understand their mechanisms. Other studies will include changes in microtubule distribution and other cytoskeletal structure during cell division and electron microscopic examination of the degeneration of nigral neuronal terminals and synapses in the caudate nucleus. In most of the studies the major objectives are to determine the structure/function relationships of cellular processes. In addition, the instrument will be used for educational purposes in three major graduate programs: Zoology-Cell and Developmental Biology, Physiology-Neurobiology and Biochemistry. Application Received by Commissioner of Customs: April 30, 1986.

Docket No. 86–200. Applicant: Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, NY 10461. Instrument: Optical Microscope. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument is intended to be used for the study of embryonic, normal adult and cancer cells. Living cells are penetrated with one or more ultrafine microelectrodes under visual control. A primary goal of the studies is to analyze mechanisms of intracellular communication, which is important in development, growth control and electrical signalling between excitable cells of, for example, brain, heart and pancreatic islets. The instrument will also be involved in graduate and postdoctoral teaching in that research instruments are shared and a vital part of this advanced education is hands-on research experience. Application Received by Commissioner of Customs: April 30, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–11687 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Purdue University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–006. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Free Flow Electrophoresis Apparatus, Model Elphor Vap 22 with Accessories. Manufacturer: Bender and Hobein GmbH, West Germany. Intended use: See notice at 50 FR 45647.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can collect 15 distinct fractions over a separation distance of 1.0 centimeter rapidly and at a controlled temperature of +4 to +25 degrees centigrade. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivilent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–11694 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; State University of New York at Stony Brook

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket No. 85–291. Applicant: State University of New York at Stony Brook, Stony Brook, NY 11794. Instrument: Reflex Light Microscope. Manufacturer: Reflex Measurement Limited, United Kingdom. Intended use: See notice at 50 FR 41381.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides three-dimensional measurements of very small objects with a horizontal repeatability of pointing to a well-defined point of 0.002 millimeters and 0.015 in the vertical direction. The National Institutes of Health advises in its memorandum dated April 3, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–11692 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Maine at Orono

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–115. Applicant: University of Maine at Orono, Orono, ME 04469. Instrument: Custom Surface Analysis System, Model LHS–10. Manufacturer: Leybold-Heraeus GmbH,

West Germany. Intended use: See notice at 51 FR 6576.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides for in situ photoelectron spectroscopy of surfaces at ambient pressures of 5 mbar.

This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR D0c. 86-11693 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Texas

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 83-065R. Applicant: University of Texas, Austin, TX 78712. Instrument: X-ray Photoelectron Spectrometer (ESCALAB 5). Manufacturer: VG Scientific Limited, United Kingdom. Original notice of this resubmitted application was published in the **Federal Regiser** of December 14, 1982.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a guaranteed minimum sensitivity of 30 000 counts/second on the Ag 3d ⅝ at resolution 0.88 eV (FMHM). The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument, at time of purchase (October 4, 1982), for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11689 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Wyoming

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-084R. Applicant: University of Wyoming, Laramie, WY 82071. Instrument: Thermal Ionization Mass Spectrometer, Model IS 117. Manufacturer: VG Isotopes Limited, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of February 27, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a precision in the measurement of Sr and Nd of 30 parts per million. The National Bureau of Standards advises in its memorandum dated March 27, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or approval of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11695 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Micromanipulators; Virginia Commonwealth University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC.

Docket Number: 85-299. Applicant: Virginia Commonwealth University/ Medical College of Virginia. Intended Use: See notice at 50 FR 41379.

Docket Number: 85-302. Applicant: Virginia Commonwealth University/ Medical College of Virginia. Intended Use: See notice at 50 FR 45645.

Article: Micromanipulator.

Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Advice submitted by: National Institutes of Health: April 3, 1986.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. Reasons: The foreign instruments provide precise and smooth movements in increments of 2.0 micrometers on any of three axes with a singly controlled variable-ratio hydraulic mechanism. The National Institutes of Health advises in the cited memoranda that (1) this capability is pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educatioal and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-11688 Filed 5-22-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 50839-5139]

Federal Information Processing Standard 119, Ada Programming Language

AGENCY: National Bureau of Standards, Commerce.

ACTION: Final notice; correction.

SUMMARY: In FR Doc. 85-26706, appearing on pages 46472-46474, in the issue of Friday, November 8, 1985, a portion of a sentence was inadvertently

omitted which is now being added as shown below.

On page 46474, first column, section 11.1 *Acquisition of Ada Processors* which continues into the middle column on that page, the concluding paragraph in section 11.1 should read as follows:

"A transition period provides time for industry to produce Ada processors conforming to the standard. The transition period begins on the effective date and continues for one year (1) thereafter. The provisions of this publication apply to orders placed after the effective date; however, an Ada language processor not conforming to FIPS Ada may be acquired for interim use during the transition period."

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–2431.

Dated: May 20, 1986.

Ernest Ambler,

Director.

[FR Doc. 86–11638 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Subcommittee will convene separate public meetings, June 10–12, 1986 at Fort Christiansvaern, at Christiansted, St. Croix, U.S. Virgin Islands, as follows:

Council—will convene its 56th regular public meeting, June 11, 1986, at 9 a.m., adjourn at 5 p.m., reconvene June 12 at 9 a.m., and adjourn at noon, to consider fishery management plans under development, and other technical and administrative matters related to Council operations.

Administrative Subcommittee—will convene June 10 at 2 p.m. and adjourn at 5 p.m., to discuss issues related to its regular administrative operations.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918; telephone: (809) 753–4926.

Dated: May 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86–11672 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Permit Review and Domestic Annual Processing (DAP) Estimating Committees will convene separate public meetings, June 5–6, 1986, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service (NMFS), 7600 Sand Point Way, Room 2079, Seattle, WA, as follows:

Permit Review Committee—will convene June 5 at 9 a.m., to review the Council's current joint venture policy and discuss the need for company limits on both bycatch and target species and develop recommendations for Council review in late June.

DAP Estimating Committee—will convene June 6 at 1 p.m. The DAP Estimating Committee was established to develop ways to improve the DAP reporting system from industry. At this first meeting, the Committee will receive a report from the NMFS on their progress in developing ways to obtain more reliable DAP estimates. The Committee also may draft alternatives for public review.

For further information contact Clarence Pautzke, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: May 20, 1986.

Richard B. Roe,

Director Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86–11673 Filed 5–22–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Additions to Procurement List 1986

SUMMARY: This action adds to Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 23, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Addition to the Procurement list of the commodity and services listed below was published in the **Federal Register** on February 18, March 14, and March 28, 1986 (51 FR 5753, 51 FR 8868, and 51 FR 10651). One comment was received in response to the notice proposing the addition to the Procurement List of Janitorial/Custodial, Jacob K. Javits Federal Building including U.S. Court of International Trade, 26 Federal Plaza and Centre Street Garage, 203–209 Centre Street, New York, New York. The commentor indicated that his firm is minority owned and employs disadvantaged individuals in the New York area. He stated that the service should be set-aside for contracting under the SBA 8(a) program. This service is currently performed by Federal employees and has not been contracted for. The Committee considered the comment received and determined that the addition of this service to the Procurement List would not cause severe impact.

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities and services listed.

c. The action will result in authorizing small entities to produce the commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1986:

Commodities

Enamel

8010–00–067–5436
8010–00–067–5437
8010–00–079–2750
8010–00–079–2752
8010–01–203–7803
8010–01–203–7804
8010–00–079–3750
8010–00–079–3752

8010-00-079-3754
8010-00-079-3756
8010-00-079-3758
8010-00-079-3760
8010-00-079-3762
8010-00-079-3764

Services

Elevator Operation Service, Wyoming Valley Veterans Building, 19 North Main Street, Wilkes-Barre, Pennsylvania
Janitorial/Custodial, Jacob K. Javits Federal Building, including U.S. Court of International Trade, 26 Federal Plaza and Centre Street Garage, 203-209 Centre Street, New York, New York
Operation of Postal Service Center Minot Air Force Base, North Dakota.

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 86-11641 Filed 5-22-86; 8:45 am]

BILLING CODE 6820-33-M

Proposed Additions to Procurement List 1986

SUMMARY: The Committee has received proposals to add to Procurement List 1986 a commodity to be produced by and services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: June 25, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodity

Handkerchief, Man's
8440-00-261-4246

Services

Commissary Shelf Stocking, Naval Air Station, Pensacola, Florida
Rehabilitation of Recorder Covers (Requirements of U.S. Geological Survey, Bay St. Louis, Mississippi only).

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 86-11642 Filed 5-22-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Industrial Security Inspection Report; DD Form 696

The Defense Investigative Service (DIS) uses the Inspection Report to assist in arriving at a determination that DoD contractors participating in the Defense Industrial Security Program are adequately safeguarding classified information. The report is completed in its entirety by DoD industrial security representatives at their official duty stations to reflect results of individual inspection of contractor's security programs.

Contractor facilities inspection.
Responses 13,600.
Burden Hours 100,918.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3225, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Richard A. Brushwood, DIS Industrial Security Programs Division, Room 5333, 1900 Half St., SW., Washington, DC 20324-1700, telephone (202) 475-0906.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1986.

[FR Doc. 86-11697 Filed 5-22-86; 8:45 am]

BILLING CODE 3810-01-M

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Arms, Ammunition, and Explosives (AA&E) Inspection/Survey Report; DIS Form 90

The Defense Investigative Service (DIS) uses the Inspection/Survey Report to assess DoD contractor compliance with the physical security requirements of contracts involving AA&E. The report is completed onsite at Defense contractor plants by DIS industrial security representatives. Information obtained identifies contract security compliance problems which require resolution or military department attention.

Contractors facilities inspected by DIS.

Responses 200.
Burden Hours 200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virgina 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Everett S. Johnson, Jr., DIS Industrial Facilities Protection Programs Division, Room 5333, 1900 Half Street, SW., Washington, DC 20324–1700, telephone (202) 475–0906.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1986.

[FR Doc. 86–11698 Filed 5–22–86; 8:45 am]

BILLING CODE 3810-01-M

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal my be obtained.

Extension

Significant AA&E Incident Report; DIS Form 91

The Defense Investigative Service (DIS) uses the Significant AA&E Incident Report to record significant incidents pertaining to the loss, theft, and recovery of conventional AA&E at Defense contract facilities. The reports completed by DIS Industrial Security Representatives after telephonic notification of such incidents by contractors possessing AA&E. Information obtained provides a basis for evaluating adequacy of contractor physical security systems.

Contractors facilities eligible to report incidents.

Responses 200.

Burden Hours 200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Everett S. Johnson, Jr., DIS Industrial Facilities Protection Programs Division, Room 5333, 1900 Half Street, SW., Washington, DC 20324–1700, telephone (202) 475–0906.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1986.

[FR Doc. 86–11731 Filed 5–22–86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Air Force (DAF), DoD.

ACTION: Notice of deletion and amendment of Air Force Systems of Records Notices.

SUMMARY: The Air Force proposes to delete 2 systems of records notices, amend 7 and add 1. Changes are summarized below and the rewritten notices follow in their entirety. The added system was formerly published by the Department of the Army as system A0708.16USREDCOM at 50 FR 22189, May 29, 1985. The added notice is being republished here due to the transfer of support responsibility for the US Readiness Command to the Department of the Air Force.

EFFECTIVE DATE: The deletions are effective immediately May 20, 1986 and the amendments shall be effective without further notice June 23, 1986, unless public comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Updike, HQ USAF/DAQD(S), the Pentagon, Washington, DC 20330–5024, telephone: 202/694–3431.

SUPPLEMENTARY INFORMATION: The Air Force systems of records inventory subject to the Privacy Act of 1974, Title 5, United States Code, Section 552a (Pub. L. 93–579; 44 Stat. 1898 *et seq.*) has been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22332) May 29, 1985
FR Doc. 85–14122 (50 FR 24672) June 12, 1985
FR Doc. 85–15062 (50 FR 25737) June 21, 1985
FR Doc. 85–26775 (50 FR 46477) November 8, 1985
FR Doc. 85–29261 (50 FR 50337) December 10, 1985
FR Doc. 86–2527 (51 FR 4531) February 5, 1986
FR Doc. 86–4546 (51 FR 7371) March 3, 1986
FR Doc. 86–10044 (51 FR 16735) May 6, 1986.

None of the proposed changes or the added system require a report as mandated by 5 U.S.C. 552a(o). The added system does not duplicate any now in use within the Department of the Air Force.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1986.

DELETIONS

F010 MAC A

System Name:

Correspondence, Message, Project Files (Civil Reserve Air Fleet (50 FR 22337) May 29, 1985.

Reason:

This system has been discontinued.

F030 TAC A

System Name:

Base Automated Mobility System (BAMS) Personnel Extract Tape (50 FR 22371) May 29, 1985.

Reason:

This system has been replaced by F030 AF MP D, Contingency Operations System (COMPES) (50 FR 22360). May 29, 1985.

AMENDMENTS

F030 AF MP A

System Name:

Personnel Data System (50 FR 22350) May 29, 1985.

Changes:

Categories of individuals covered by the system:

Delete "nonappropriated fund employees," and add at end, "DOD contractors and foreign military personnel on liaison or support duty."

F035 AF MP C

System Name:

Military Personnel Records System (50 FR 22373) May 29, 1985.

Change:

Routine uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Add, "Used by the Veterans Administration for research."

F045 MPC A

System Name:

Educational Delay Board Findings (50 FR 22438) May 29, 1985.

Authority for Maintenance of the System:

Change to, "10 USC 2108, Advanced standing; interruption of Training; delay in starting obligated service; release from program, and 50 Appendix USC 456, Deferments and exemptions from training and service."

F125 AF SP K

System Name:

Vehicle Administration Records (50 FR 22501) May 29, 1985

Change:

Purpose(s):

Add at end, "Note: In the State of Alaska, the system is also used to ensure that individuals comply with state law on the Alaskan Emission Inspection Program."

F160 DODMERB A

System Name:

Department of Defense Medical Examination Review Board Medical Examination Files (50 FR 46485) May 29, 1985.

Changes:

System Location:

Add, "and Camp Hill PA."

Categories of Individuals Covered by the System:

Change to read, "All applicants to the five service Academies; the Four Year Reserve Officer Training Corps (ROTC) Scholarship Program; Uniform Services University of the Health Sciences (USUHS); Army, Navy, Air Force College Scholarship Program (CSP)."

Categories of Records in the System:

Change to read, "Report of the Medical Examination, Report of Medical History, Report of Dental Examination, to include dental x-rays and any associated civilian forms or medical tests that have been accomplished; may also contain personal correspondence between DODMERB and the applicant, parents/guardian concerning the applicant's medical history or qualification status."

Purpose(s):

Change to read, "The medical examination in computer form is used to determine medical acceptability for one or more of the five service academies or the ROTC, USUHS, CSP for the Air Force, and/or POC Program for Air Force ROTC. The computer also produces products to advise each program manager of initial medical status and all update actions on the applicant."

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Add, "Medical consultation may be necessary with parent/legal guardians to clarify/explain applicant's medical status. Examinations may be released to civilian contract agents of the government and private physicians associated with medically certifying applicants for military service."

Storage:

Change to read, "Stored in computer and electronic digital imaging system."

F215 AFA A

System Name:

Library Authorized Patron File (50 FR 22556) May 29, 1985.

Changes:

Categories of Records in the System:

Change to read, "Social Security Number, name, library card number, base and/or home address, privilege code, statistical code, base organizational affiliation code, telephone number(s), expiration date, number of cards issued, service code (if appropriate), graduate school code (if appropriate) for special borrowers, and difsiv training code (if appropriate)."

Purpose(s):

Change, "Library," to "Library and Visual Information Services."

Retention and Disposal:

Add, "Paper forms are destroyed when no longer needed."

F900 TAC A

System Name:

Special Awards File (50 FR 22562) May 29, 1985.

Changes:

System Manager(s) and Address:

Change "Director of Personnel" to "Deputy Chief of Staff, Personnel."

ADDITIONS

F030 REDCOM A

System Name:

USREDCOM Military Personnel Data File.

Reason:

Support responsibilities for the US Readiness Command have been transferred from the Department of the Army to the Department of the Air Force. This was formally Army system A0708.16 USREDCOM (50 FR 221891) May 29, 1985.

F030 REDCOM A

SYSTEM NAME:

030 REDCOM A USREDCOM Military Personnel Data File.

SYSTEM LOCATION:

US Readiness Command, MacDill AFB FL 33608–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Marine Corps, and Air Force personnel assigned for duty with USREDCOM.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's name, SSN, rank, pay grade, date of rank, branch of service, basic pay entry date, date of birth, organization and division, alert status-joint task force, immunization dates, weapons qualification, primary and secondary military specialty, duty MOS/AFSC, marital status, officer evaluation report/enlisted efficiency report date, reserve regular status, duty telephone number, home address and telephone number, date arrived at USREDCOM, projected loss date, expiration term of service, foreign service availability code, human personal reliability screening date, language proficiency, enlisted evaluation report weighted average, name of OER/EER rater, duty title, permanent grade, date of rank, rated category, highest professional military and civilian education, source of commission, mandatory retirement date (officers).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by

PURPOSE(S):

To maintain a consolidated joint personnel file on personnel assigned to the USREDCOM. Although each service has its own personnel system, USREDCOM requires basic data for Command Manning Rosters, Joint Task Force Deployment Rosters, and similar management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Department of the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On-line disk storage backed up by magnetic tape.

RETRIEVABILITY:

Data is retrieved by SSN.

SAFEGUARDS:

All personnel who maintain the system are cleared for Top Secret. Access to the data is controlled by system software. Outputs are labeled.

RETENTION AND DISPOSAL:

Records are deleted when individuals depart USREDCOM.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, US Readiness Command, MacDill AFB FL 33608–6001.

NOTIFICATION PROCEDURE:

Individuals wishing to know if the system contains information on them may write the system manager, ATTN: Directorate of Personnel, JI (ATTN: RCJi–MP). Individuals must furnish full name, SSN, current address and telephone number, and a signature.

RECORD ACCESS PROCEDURES:

Individual may obtain assistance by writing the address and providing the information listed under Notification procedure.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Information is obtained from military personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Amended Systems

F030 AF MP A

SYSTEM NAME:

030 AF MP A Personnel Data System (PDS).

SYSTEM LOCATION:

Headquarters United States Air Force, Washington, DC 20330. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150. Air Reserve Personnel Center, Denver, CO 80280. Headquarters of major commands and separate operating agencies and consolidated base personnel offices, central civilian personnel offices (CCPOs) and consolidated reserve personnel offices. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty and retired military personnel. Air Force Reserve and Air National Guard personnel. Air Force Academy cadets. Air Force Civilian employees. Certain surviving dependents of deceased members of the US Air Force and predecessor organizations; potential Air Force enlistees; candidates for commission enrolled in college level Air Force Reserve Officer Training Corps Programs; Deceased members of the Air Force and predecessor organizations; Separated members of the US Air Force, the Air National Guard (ANG) and Air Force Reserve (USAFR); ANG and USAFR Technicians; Prospective, pending, current, and former Air Force civilian employees, except Air National Guard Technicians-current and former civilian employees from other Governmental agencies that are serviced at CCPOs may be included at the option of servicing CCPO: DOD contractors and foreign military personnel on liasion or support duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

The principal digital record maintained at each PDS operating level is the master personnel record, which contains the following categories of information: 1. Accession data pertaining to an individual's entry into the Air Force (place of enlistment source of commission, home of record, date of enlistment, place from which ordered to EAD). 2. Education and training data, describing the level and type of education and training, civilian or military (academic education level, major academic specialty, professional specialty courses completed, professional military education received). 3. Utilization data used in assigning and reassigning the individual, determining skill qualifications, awarding Air Force Specialty Codes, determining duty location and job assignment, screening/selecting individual for overseas assignment, performing strength accounting processes, etc. (Primary Air Force Specialty code, Duty and Control Air Force Specialty Code, personnel accounting symbol, duty location, up to 24 previous duty assignments, aeronautical rating, date departed last duty station, short tour return date, reserve section, current/last oversea tour). 4. Evaluation Data on members of the Air Force during their career (Office Effectiveness Report dates and ratings, Airman Performance Report dates and ratings, result of various qualification tests, an "Unfavorable Information" indicator, and Drug and Alcohol Abuse data). 5. Promotion Data including promotion history, current grade and/or selection for promotion (current grade, date of rank and effective date; up to 10 previous grades, dates of rank and effective dates; projected temporary grade, key "service dates"). 6. Compensation data—although PDS does not deal directly with paying Air Force members, military pay is largely predicated on personnel data maintained in PDS and provided to the Air Force Accounting and Finance Center (AFAFC) as described in ROUTINE USES below (pay date, Aviation Service Code, sex, grade, proficiency pay status. 7. Sustentation data—information dealing with programs provided or actions taken to improve the life, personal growth and moral of Air Force members (awards and decorations, marital status, number of dependents, religious denomination of member and spouse, race relations education). 8. Separation and retirements data, which identifies an individual's eligibility for and reason for separation (date of separation, mandatory retirement date, projected or actual separation program designator and character of discharge). At the central processing site (AFMPC), other subsidiary files or processes are operated which are integral parts of PDS: 1. Procurement Management Information System (PROMIS) is an automated system designed to enable the USAF to exercise effective management and control of the personnel procurement personnel required to meet the total scheduled

manpower requirements necessary to accomplish the Air Force mission. The system provides the recruiter with job requirement data such as necessary test scores, Air Force Specialty Code, sex, date of enlistment; and the recruiter enters personal data on the applicant—SSN, name, date of birth, etc.—to reserve the job for him or her. 2. Career Airman Reenlistment Reservation System (CAREERS) is a selective reenlistment process that manages and controls the numbers by skill of first-term airmen that can enter the career force to meet established objectives for accomplishing the Air Force mission. A Centralized data bank contains the actual number, by quarter, for each Air Force Specialty Code (AFSC) that can be allowed to reenlist during that period. The individual requests reenlistment by stating his eligibility (AFSC, grade, active military service time, etc.). If a vacancy exists, a reservation—by name, SSN, etc.—will be made and issued to the CBPO processing the reenlistment. 3. Airman Accessions provides the process to capture a new enlistee's initial personal data (entire personnel record) to establish a personnel data record and gain it to the Master Personnel File of the Air Force. The initial record data is captured through the established interface with the Processing and Classification of Enlistees System (PACE) at Basic Military Training, Lackland Air Force Base, for non-prior service; for prior service enlistees the basic data (name, SSN, DOE, grade, etc.) is input directly by USAF Recruiting Service and updated and completed by the initial gaining CBPO. 4. Officer Accessions is the process whereby each of the various Air Force sources of commissioning (AF Academy, AFROTC, Officer Training School, etc.) project their graduates in advance allowing management to select by skill, academic specialty, etc. which and how many will be called to active duty when, by entering into the record an initial assignment and projected entry onto Active Duty date. On that date the individual's record is accessed to the active Master Personnel File of the Air Force. 5. Technical Training Management Information System (TRAMIS) is a system dealing with the Technical Training activities controlled by Air Training Command. The purpose of the system is to integrate the training program, quota control and student accounting into the personnel data system. TRAMIS consists of numerous files which constitute "quota banks" of available training spaces, in specific courses, projected for future use based on estimated training requirements. Files include such data as: Course Identification Numbers, Class Start and Graduation Dates, Length of Training, Weapon System Identification, Training Priority Designators, Responsible Training Centers, Trainee Names, SSN (and other pertinent personnel data) on individuals scheduled to attend classes. 6. Training Pipeline Management Information System (TRAPMIS) is an automated quota allocating system which deals with specialized combat aircrew training and aircrew survival training. Its files constitute a "quota bank" against which training requirements are matched and satisfied and through which trainees are scheduled in "pipeline" fashion to accommodate the individual's scheduled geographical movement from school to school to end assignment. Files contain data concerning the courses monitored as well as names, SSNs and other pertinent personnel data on members being trained. 7. Air Force Institute of Technology (AFIT) Quota Bank File reflects program quotas by academic specialty for each fiscal year (current plus two future fiscal years, plus the past fiscal year programs for historical purposes). Also, this file reflects the total number of quotas for each academic specialty. Officer assignment transactions process against the AFIT Quota Bank file to reflect the fill of AFIT Quotas. Examples of data maintained are: Academic Specialty, Program Level, Fiscal Year, Name of Incumbent selected, projected, filling AFIT Quota. 8. Job File is derived from the Authorization Record and is accessible by Position Number. Resource managers can use the Job File to validate authorizations by Position Number for assignment actions and also to make job offers to individual officers. Internal suspensing within the Job File occurs based upon Resource Managers update transactions. Data in the file includes: Position Number, Duty AFSC, Functional Account Code, Program Element, Location, and name of incumbent. 9. Casualty subsystem is composed of transactions which may be input at Headquarters Air Force and/or CBPOs to report death or serious illness of members from all components. A special file is maintained in the system to record information on individuals who have died. Basic identification data and unique data such as country of occurrence, date of incident, casualty group, aircraft involved in the incident and military status are recorded and maintained in this file. 10. Awards/Decorations are recorded and maintained on all component personnel in the headquarters Air Force master files. All approved decorations are input at CBPOs whereas disapproved decorations are input at MAJCOM/HAF. A decorations statistical file is built at AFMPC which reflects an aggregation of approvals/disapprovals by category of decoration. This file does not contain any individually identifiable data. All individually identifiable data on decorations is maintained in the Master Personnel File. Such information as the type of decoration, awarding authority, special order number and date of award are identified in an individual's record. Seven occurrences for all decorations are stored; however only specific data on the last decoration of a particular type is maintained. 11. Point Credit Accounting and Reporting System (PCARS). This system is an Air National Guard/Air Force Reserve Unique supported by PDS. Its basic purpose is to maintain and account for retirement/retention points accrued as a result of participating in Drills/Training. The system stores basic personal identification data which is associated with a calendar of points, earned by participation in the Reserve program. Each year an individual's record is closed and point totals are accumulated in history, and a point earning statement is provided the individual and various records custodians. 12. Human Reliability/Personnel Reliability File: This file is maintained at Headquarters Air Force in support of Air Force Regulation 35–99. It is not part of the Master Personnel Files but a free standing file which is updated by transactions from CBPOs. The file was established to specifically identify individuals who have become permanently disqualified under the provisions of the above regulations. A record is maintained on each disqualified individual which includes basic identification data, service component, Personnel/Human reliability status and date, and reason for disqualification. 13. Variable Incentive Pay (VIP) File for medical officers: Contains about 125 character record on all Air Force physicians and is specifically used to identify whether the individual is participating in the Continuation Pay or Variable Incentive Pay programs. Update to this file is provided by the Surgeon (AFMPC), the Air Force Accounting and Finance Center and directly from changes to the Master Personnel File. Besides basic identification data an individual's record includes source of appointment, graduate medical location status, amount of VIP or Continuation Pay and the dates of authorization and the dates and reason for separation. 15. Weighted

Airman Promotion System: (a) The Test Scoring and Reporting Subsystem (TSRS) provides for: Identifying at the CBPO individuals eligible for testing; providing output to the Base Test Control Officer and the CBPO to control, monitor, and operate WAPS testing functions; editing and scoring WAPS test answer cards at AFMPC; providing output for maintaining historical and analytical files at AFMPC and the Human Resources Laboratory (HRL) and includes the central identification at AFMPC of individuals eligible for testing. (b) The Personnel Data Reporting Subsystem (PDRS) provides for: Identifying promotion eligibles at AFMPC; verifying these eligibles and selection promotion data; merging test and weighted promotion data at AFMPC to effect promotion scoring, assigning the promon objective and aligning selectees in promotion priority sequence; maintaining projections on promotion selectees at AFMPC, MAJCOM, and the CBPO; updating these projections monthly; creating output products to monitor the flow of data in the system; maintaining promotion historical and analytical files and reports at AFMPC. (c) Basically, identification data along with time in grade, test scores, decoration information, time in service, and airman performance report history is used to support this program. 16. Retired Personnel Data System (RPDS) is made up of four files—Retired Officer Management File and Retired Airman Management File containing records on members in retired status and the Retired Officer and Airman Loss Files containing records on former retirees who have been lost from rolls, usually through death. The RPDS is used to produce address listings for the Retired Newsletter and Policy letter, statistical reports for budgeting, to manage the Advancement Program, the Temporary Disability Retired List, Age 59 rosters for ARPC, General Officer roster, and statistical digest data for management analysis functions. Data is extracted from the master files upon retirement from Active Duty or Reserves. Data includes: name, SSN, grade data, service data, education data, retirement data and address. 17. Separated Officer File contains historical information on officers who leave the Air Force via separation, retirement, or death. Copies are sent to Human Resources Lab and Washington offices for research purposes. The data comprises the Master Personnel Record in its entirety and is captured 30 to 60 days after separation from the Air Force. 18. Airman Gain/loss File includes data extracted from the Airman Master file when accession and separation (gains and losses) occur. This file, like the Separated Officer File, is used for historical reports regarding strength changes. Data includes name, SSN, and other data, that reflects strength, i.e., promotions, reassignment data, specialty codes, etc. 19. Officer and Airman Separation Subsystem is used to process, track, approve, disapprove and project separations from the Air Force and transfers between components of the Air Force. This subsystem uses the Active, Guard, and Reserve MPFs. Data includes that specifically related to separations, e.g., Data of Separation, Separation Program Designator, waivers, etc. 20. The Retirements Subsystem is used to process and track applications for and approval/disapproval and projections of retirements. This subsystem uses the Master Files for Active Duty and Reserve officers and airmen. Data specifically related to retirements includes application data, date of separation, waiver codes, disapproval reason codes, Separation Program Designator, Title 10 U.S.C. section, etc. 21. Retired Orders Log is a computer produced retirement orders routine. Orders are automatically produced when approval, verification of service dates, and physical clearance have been entered in system. The orders log contains data found in administrative orders for retirement, including name, SSN, grade, order number, effective dates, etc. The log is used to control assignment of order number, and as a cross-reference between orders, revocations, and amendments. 22. General Officer Subsystem of PDS contains data extracted from the Master Personnel File and language qualification data and assignment hisory data maintained by the Assistant for General Officer matters. A record is maintained on each general officer and general officer selectee. The general officer files are updated monthly and is used to produce products used in the selection/identification of general officers for applicable assignments. 23. Officer Structure Simulation Model (OSSM) provides officer force descriptions in various formats for existing, predictive or manipulated structures. It functions as a planning tool against which policy options can be applied so as to determine the impact of such policy decisions. The OSSM input records contain individual identification data from the Master Personnel Record, but all output is statistical. 24. Widow's File is maintained on magnetic tape and updated by the office of primary Responsibility. When required, address lables and listings are produced by employing selected PDS utility programs. The address labels are used to forward the Retired Newsletter to widows of active duty and retired personnel. The listings are used for management control of the program. Contained in the file are the name, address, and SSN of the widow. Additionally, the deceased sponsor's name, SSN, date of death, and status at time of death are maintained. 25. Historical Files are files with a retention period of 365 days or more. They consist of copies of active master files, and are used primarily for aggregation and analysis of statistical data, although individual records may be accessed to meet ad hoc requirements. 26. Miscellaneous files, records, and processes are a number of work files, inactive files with a less-than-365 day retention period, intermediate records, and processes relating to statistical compilations computer operation, quality control and problem diagnosis. Although they may contain individual-identifying data, they do so only as a function of system operation, and are not used in making decisions about people. 27. Civilian employment information including authorization for position, personnel data, suspense information; position control information; projected information and historical information; civilian education and training data; performance appraisal, ratings, evaluations of potential; civilian historical files covering job experience, training and transactions; civilian awards information; merit promotion plan work files; career programs files for such functional areas as procurement, logistics, civilian personnel, etc., civilian separation and retirement data for reports and to determine eligibility; adverse and disciplinary data for statistical analysis and employee assistance; stand alone files, as for complaints, enrollee programs; extract files from which to produce statistical reports in hard copy, or for immediate access display on remote computer terminals; miscellaneous files, as described in item 26, above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 265, policies and regulations: Participation of reserve officers in preparation and administration; 269, Ready reserve: Placement in; transfer from; 275, Personnel records; 278, Dissemination of information; 279, Training Reports; Chapter 31, Enlistments; 564, Warrant officers: effect

of second failure of promotion; 593, Commissioned officers: appointment, how made; term; 651, Members: Required service; 671, Members not to be assigned outside US before completing training; 673, Ready reserve; Chapter 47, Uniform Code of Military Justice, Sections 835, Art. 35. Service of Charges, 837, Art. 37. Unlawfully influencing action of court; 885, Art. 85. Desertion; 886, Art. 86. Absence without leave; 887, Art. 87. Missing movement; 972, Enlisted members: Required to make up time lost; 1005, Commissioned officers: Retention until completion of required service; 1163, Reserve components: Members; limitations on separation; 1164, Warrant officers; separation for age; 1166, Regular warrant officers: Elimination for unfitness or usatisfactory performance; Chapter 61, Retirement—Physical disability; Chapter 63, Retirement for Age, Section 1263—Age 62: Warrant officers; Chapter 65, Retirement for Length of Service; 1293, Twenty years or more: warrant officers; 1305, Thirty years or more: Regular warrant officers; Chapter 67, Retired pay; 1331, Computation of years of service in determining entitlement to retired pay; 1332, Age and service requirements; 1333, Computation of years of service in computing retired pay; Chapter 79, Correction of Military Records; Chapter 165, Accountability and responsibility, Section 2771, Final settlement of accounts: Deceased members; 8012, Secretary of the Air force: powers and duties; delegation by; Chapter 805, The Air Staff, Sections 8032, General duties; and Section 8033, Reserve components of Air Force; policies and regulations for government for government of: Functions of National Guard Bureau with respect to Air National Guard; Chapter 831, Strength, Section 8224, Air National Guard of the United States; Chapter 833, Enlistments; 835, Appointments in the Regular Air Force, 8284, Commissioned officers: appointment, how made; 8285, Commissioned officers: Original appointment; qualifications; 8296, Promotion lists: Promotion-list officer defined; determination of place upon transfer or promotion; 8297, Selection boards; 8303, commissioned officers: Effect of failure of promotion to captain, major, or lieutenant colonel; Chapter 837, Appointments as Reserve Officers; 8360, Commissioned officers: Promotion service; 8362, Commissioned officers: selection boards; 8363, Commissioned officers: Selection boards; general procedures; 8366, Commissioned officers: Promotion to captain, major or lieutenant colonel; 8376, Commissioned officers: promotion when serving in temporary grade higher than reserve grade; Chapter 839, Temporary Appointments, 8442, Commissioned officers; regular and reserve components: Appointment in higher grade; 8447, Appointments in commissioned grade: How made; how terminated; Chapter 841, Active Duty, 8496, Air National Guard of United States: Commissioned officers; duty in National Guard Bureau; Chapter 853, Rights and benefits, Section 8691, Flying officer rating: Qualifications; Chapter 857, Decorations and Awards; Chapter 859, Separation, 8786, Officer considerd for removal: Voluntary retirement or honorable discharge; severance benefits; 8796, Officers considered for removal: Retirement or discharge; Separation or Transfer to Retired Reserve, 8846, Deferred Officers; 8848, 28 years: Reserve first lieutenants, captains, majors, and lieutenant colonels; 8851, Thirty years or five years in grade: reserve colonels and brigadier generals; 8852, Thirty-five years or five years in grade: Reserve major generals; 8853, Computation of years of service; Chapter 865, Retirement for Age, 8883, Age 60; regular commissioned officers below major general; 8884, Age 60: Regular major generals whose retirement has been deferred; 8885, Age 62: Regular major generals; 8886, regular major generals whose retirement has been deferred; Chapter 867, Retirement for Length of Service, 8911, Twenty years or more; regular or reserve commissioned officers; 8913, Twenty years or more: Deferred officers not recommended for promotion; 8914, twenty to thirty years: regular enlisted members; 8915, Twenty-five years: Female majors except those designated under section 8067(a)–(d) or (g)–(i) of this title; 8916, twenty-eight years: Promotion-list lieutenant colonels; 8917, Thirty years or more: Regular enlisted members; 8918, Thirty years or more: Regular commissioned officers; 8921, Thirty years or five years in grade: Promotion-list colonels; 8922, Thirty years or five years in grade: regular brigadier generals; 8923, Thirty-five years or five years in grade: Regular major generals; 8924, Forty years or more: Air Force officers; Chapter 901, Training generally, 9301, Members of Air Force: Detail as students, observers and investigators at educational institutions, industrial plants, and hospitals; and 9302, Enlisted members of Air Force: Schools; Chapter 903, United States Air Force Academy, 9342, Cadet: Appointment; numbers, territorial distribution; 9344, Selection of pesons from Canada and American Republics; 9345, Selection of Filipinos; Chapter 1, Organization, 102, General policy; and 104, units: Location; organization; command; Chapter 3, Personnel, 307, Federal recognition of officers: Examination, certification of eligibility; Chapter 7, Services, supplies, etc., 709, Caretakers and clerks; Chapter 3, Basic Pay, 308, Special pay: Reenlistment bonus; 313, Special pay: Medical officers who execute active duty agreements; Chapter 7, Allowances, 407, Travel and transportation allowances: Dislocation allowance; Chapter 10; Air Force Manual 30–3, Vol I–V, Mechanized Personnel Procedures, Air Force Manual 30–130, Base Level Military Personnel System, and Air Force Manual 300–4, Standard Data Elements and Codes.

PURPOSE(S):

The Air Force operates a centralized personnel management system in an environment that is widely dispersed geographically and encompasses a population that is diverse in terms of qualifications, experience, military status and needs. There are three major centers of Air Force personnel management: Washington, DC, where most major policy and long-range planning/programming decisions are made; the Air Force Manpower and Personnel Center at Randolph Air Force Base, TX, which performs most personnel operations-type functions for the active duty components of the force; and the Air Reserve Personnel Center at Denver Co., which performs certain operational functions for the Reserve components of the force. Offices at Major Command Headquarters, State Adjutant General, and Air Force Bases perform operational task pertaining to the population for which they are responsible. The structure of the Air Force and its personnel management system, the composition of the Force, and the Air Force's stated objective of treating its people as individuals, i.e., giving due consideration to their desires, needs and goals, demand a dynamic data system that is capable of supporting the varying needs of the personnel managers at each echelon and operating locations. It is to this purpose that the data in the Personnel Data System is collected, maintained, and used. A. *Routine uses within the Air Force—Internal to the Personnel Community: HQ USAF, Washington, DC:* Deputy Chief of Staff, Personnel and his immediate staff; Director of Personnel Plans; Director of Personal Programs; Assistant for General Officer Matters; Assistant for Colonel Assignments; Reserve Personnel Division; Air National Guard Personnel

Division; and The Surgeon General, the Chief of AF Chaplains and the Staff Judge Advocate, each of which perform certain Personnel functions within their area of responsibility. Data from the central data base at the AFMPC is furnished Washington area agencies by retrieval from the computer at Randolph via remote access devices and by provision of recurring products containing required management information, including computer tape files which are used as input to unique systems with which PDS interfaces. Although most of the data is used by policy makers to develop long-term plans and programs and tack progress toward established goals, some individual data is provided/retrieved to support actions taken on certain categories of persons managed by offices in the headquarters e.g., General Officers, Colonels, Air National Guard personnel, etc. *Air Force Manpower and Personnel center (AFMPC), Randolph Air Force Base, TX.* Personnel managers at AFMPC use the data in PDS to make decisions on individual actions to be taken in areas such as personnel procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, casualty and personal affairs, separation and retirement. *Air Reserve Personnel Center (ARPC), Denver, Colorado.* Personnel managers at ARPC perform many of the same functions for the Reserve components of the Air Force as the managers at AFMPC perform for the active duty force. As with the Washington area, ARPC obtains data from the central data base at AFMPC by retrieval through remote terminals and recurring output products containing information necessary to their management processes. *Major Command Headquarters.* Major command headquarters personnel operations are supported by the standard content of PDS records provided them by AFMPC. In addition, there is provided in the PDS record an "add-on area" which the commands are authorized to use for the storage of data which will assist them in fulfilling unique personnel management requirements generated by their mission, structure, geographical location, etc. The standard functions performed fall generally under the same classifications as those in AFMPC, e.g. assignment, classification, separation, etc. Non-standard usages include provisions of unique aircrew data, production of specially-tailored name listing, control of threatre oriented training, etc. Some commands use PDS data—both standard and add-on as input to unique command systems, which are separately described in the **Federal Register.** *Consolidated Base Personnel Offices (CBPO).* CBPOs, which represent the base-level aspect of PDS, are the prime point of system-to-people interface. Supplied with a standard data base and system, CBPOs provide personnel management support to commanders and supervisors on a daily basis. Acting on receipt of data from higher headquarters, primarily by means of transactions processed through PDS, they notify people of selection for reassignment, promotion, approval/ disapproval of requests for separation and retirement, and similar personnel actions. When certain events occur on an individual at the local level, e.g., volunteer for overseas duty, reduction in grade, change in marital status, application for retirement, etc., the CBPO enters transactions into the vertical system to transmit the requisite information to other management levels and update the automated records resident at those levels. CBPOs too are allotted an "add-on" area in the computer record which they use to support local management unique requirements such as local training scheduling, unique locator listing, urinalysis testing scheduling, etc. B. *Routine uses within the Air Force—External to the Personnel Community 1. Headquarters USAF/AFMPC Interfaces:* Automated interfaces exist between the PDS cental site files and the following systems of other functions: a. The Flight Records Data System (FRDS) maintained by the Air Force Inspection and Safety Center (AFISC) at Norton Air Force Base, CA. (1) Certain personnel identification data on rated officers is transferred monthly to the FRDS. This data flow creates the basic identifying data in the FRDS, insurers compatibility with the PDS, and precludes duplicative data collection and input generation by the AFISC. (2) Update of the personnel data to the FRDS generates return flow of flying hour data which is used at AFMPC for rated resource distribution management. b. The Master Military Pay Account (MMPA), is the Joint Uniform Military Pay System (JUMPS) centralized pay file maintained by the Air Force Accounting and Finance Center (AFAFC) at Denver, CO. The PDS transfers certain pay related data as changes occur to update the MMPA, e.g., promotions, accessions, separations/retirements, name, SSN, grade. These data provide criteria for the AFAFC to determine specific pay entitlements. c. The AFAFC maintains a separate pay system for Air National Guard and Air Force Reserve personnel called the Air Reserve Pay and Allowances System (ARPAS). (1) PDS outputs certain pay related data to ARPAS as changes occur, e.g., retirements/ separations, promotions, name, SSN, grade. These data form the criteria for the AFAFC to determine specific Reserve pay entitlements. (2) ARPAS outputs data which affect accumulated point credits for Air National Guard/ Reserve participation to AFMPC for update of the Point Credit Accounting and Reporting System (PCARS), a component of PDS. PCARS also receives monthly input from Hq Air University which updates point credits as a result of completing an Extension Courses Institute correspondence program. d. AFAFC provides data on Variable Incentive Pay (VIP) for Medical Officers which is used to update a special control file within PDS and produce necessary reports for management of the VIP program. e. Air Training Command operates a system called PACE (Processing and Classification of Enlistees) at Lackland Air Force Base, TX. From that system data is fed to AFMPC to initially establish the PDS record on an Air Force enlistee. f. On a monthly basis, copies of the PDS master Personnel File are provided to the Human Resources Laboratory at Brooks Air Force Base, TX, where they are used as a statistical data base for research purposes. g. On a quarterly basis, AFMPC provides the USAF School of Aerospace Medicine with data concerning name, SSN and changes in base and command of assignment of flying personnel. The data reflects significant medical problems in the flying population. h. A complete printout of PDS data pertaining to an individual is included in his Master Personnel Record when it is forwarded to National Personnel Records Center. i. PDS data is provided to the Contingency Planning Support Capability (CPSC) at six major command headquarters: Tactical Air Command, Strategic Air Command, Military Airlift Command, Air Force Communications Command, United States Air Forces, Europe, and Pacific Air Forces. A record identifiable by individual's name and SSN provides contingency and/or mannning assistance temporary duty (TDY) being performed by the individual. Record is destroyed upon completion of the TDY. Statistical records (gross statistics by skill and unit) are also generated for CPSC from PDS providing force availability estimates. CPSC is described separately in the **Federal Register.** 2. *Base Level (CBPO) Interfaces:* Certain interfaces have been established at base level to pass data

from one functional system to another. The particular mode of interface depends on the needs of the receving function and the capabilities of the system to produce the necessary data: a. The Flight Management Data System (FMDS) receives an automated flow of selected personnel data on flying personnel as changes occur. This data consists primarily of assignment data and service dates which the base flight manager uses to determine appropriate category of aviation duty which is reflected by designation of an Aviation Service Code. The FMDS outputs aviation service data as changes occur to the BLMPS. These data subsequently flow to the PDS central site files at AFMPC so it is available for resource management decisions. b. The Medical Administration Management System (MAMS), currently being developed and tested, will receive flow of selected assignment data as changes occur for personnel assigned to medical activities. MAMS will use these data to align assigned personnel with various cost accounting work centers within the medical activity and thus be able to track manpower expenditure by sub-activities. c. The Automated Vehicle Operator Record (AVOR) is being developed to support motor vehicle operator management. Approximately 115 characters of vehicle operator data will be incorporated into the BLMPS data base during FY76 for both military and civilian personnel authorized to operate government motor vehicles and selected personnel data items (basic identification data) will be authorized for access by the vehicle operator managers. d. Monthly, a magnetic tape is extracted from BLMPS containing selected assignment data on all assigned personnel. This tape is transferred to the basic Accounting and Finance Office for input into the Accounting Operations System. This system uses these data to derive aggregate base manpower cost data. e. A procedure is designed into BLMPS to output selected background data in a pre-defined printed format for personnel being administrated military justice. This output is initiated upon notification by the base legal office. The data is forwarded to the major command where it is input into the Automated Military Justice Analysis and Management System (AMJAMS). f. The BLIMPS output (on a event-oriented basis) pay-affecting transactions such as certain promotions, accessions, and assignments/reassignments, to AFAFC, where the data is entered into the JUMPS. C. *Routine uses external to the Air Force, to the Office of the Secretary of Defense (OSD).* 1. Individual information is provided to offices in OSD on a recurring basis to support top-level management requirements within the Department of Defense. Examples are the DOD Recruiter File to the Assistant Secretary for Manpower and Reserve Affairs, (M&RA), a magnetic tape extract of military personnel records (RCS: DDM(SA) 1221) to M&RA, input to the Reserve Component Common Personnel Data System to M&RA, and the Post Career Data File to M&RA. 2. *To other Defense Agencies.* PDS supports other components of DOD by provision of individual data in support of programs operated by those agencies. Examples are the Selected Officer List to the Defense Intelligence Agency for use in monitoring a classified training program and the Defense System Management School (DSMS) Track Record System to DSMS for use in evaluating the performance of graduates of that institution. And extract file on Air National Guard Technicians is provided the National Guard Computer Center. 3. *Other Government-Quasi-Government Agencies.* Information used in analyzing officer/airman retention is provided RAND Corporation. Data on prior service personnel with military service obligations is forwarded to the National Security Agency. Lists of officers selected for promotion and/or appointment in the Regular Air Force are sent to the Office of the President and/or the Congress of the United States for review and confirmation. Certain other personnel information is provided these and other government agencies upon request when such data is required in the performance of official duties. Selected personnel data is provided foregin governments, US governmental agencis, and other Uniformed Services on USAF personnel assigned or attached to them for duty. Examples: The government of Canada, Federal Aviation Administration, US Army, Navy, etc.) 4. *Litigation.* 5. *Miscellaneous.* Lists of individuals selected for promotion or appointment, who are being reassigned, who die, or who are retiring are provided to unofficial publications such as the Air Force Times, along with other information of interest to the general Air Force public. Information from PDS support a world-wide locator system which responds to queries as to the location of individuals in the Air Force. Locator information pertinent to personnel on active duty may be furnished to a recognized welfare agency such as the American Red Cross or the Air Force Aid Society. For civilian personnel—to provide automated system support to Air Force officials at all levels from that part of the Office of Personnel Management required personnel management and records keeping system that pertains to evaluation, authorization and position control, position management, staffing skills inventory, career management, training, retirement, employee services, rights and bnefits, merit promotion, demotions, reductions in force, complaints resolution, labor management relations, and the suspensions and processing of personnel actions; to provide for transmission of such records between employing activities within the Department of Defense—to provide individual record and reports to OPM; to provide information required by OPM for the transfer between federal activities; to provide reports of military reserve status to other armed services for contingency planning—to obtain statistical data on the work force to fulfill internal and external report requirements and to provide Air Force offices with information needed to plan for and evaluate manpower, budget and civilian personnel programs—to provide minority group designator codes to the Office of Personnel Management's automated data file—to provide the Office of the Assistant Secretary of Defense Manpower and Reserve Affairs with data to access the effectiveness of the program for employment of women in executive level positions—to obtain listings of employees by function or area for locator and inventory purposes by Air Force offices—to assess the effect or probable impact of personnel program changes by simulation and modeling exercises—to obtain employee duty locations and other employee data for personnel program management purposes—to obtain employee duty locations and other information releasable under OPM rules and Freedom of Information Act to respond to request from Air Force offices, other Federal agencies and the public—to provide individual records to other components of the Department of Defense in the concuct of their official personnel management program responsibilities—to provide records to OPM for file reconciliation and maintenance purposes—and to provide information to employee unions as required by negotiated contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, card files, on computer magnetic tapes, disks or computer paper printouts or microfiche.

RETRIEVABILITY:

Filed by name, or Social Security Number (SSN). The primary individual record identifier in PDS is SSN. Some files are sequenced and retrieved from by other identifiers; for instance, the assignment action record is identified by an assignment action number. Additionally, at each echelon there exists computer programs to permit extraction of data from the system by constructing an inquiry containing parameters against which to match and select records. As an example, an inquiry can be written to select all Captains who are F–15 pilots, married, stationed at Randolph AFB, who possess a master's degree in Business Administration; then display name, SSN, number of dependents and duty location. There is the added capability of selecting an individual's record or certain pre-formatted information by SSN on an immediate basis using a teletype or cathode ray tube display device. High-speed line printers located in the Washington, DC, area, at Major Comm and Headquarters, and at ARPC permit the transfer of volume products to and for the use of Personnel managers at those locations.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in the performance of their official duties where authorized, and properly screened and cleared for need-to-known, and by commanders of medical centers and hospitals. Records are stored in security file containers/cabinets, safes, vaults and locked cabinets or rooms. Records are protected by guards. Records are controlled by personnel screening visitor registers and computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Preceding retention statement applies to Analog output products of the Personnel Data System. Data stored digitally within system is retained only for the period required to satisfy recurring processing requirements and/or historical requirements. Files with a retention period of 364 days of less are automatically released at the end of their specified retention period. "Permanent history" files are retained for 10 years. Files 365 or more days old are defined as "historical files" and are not automatically released. Retention periods for categories of PDS files are as follows: If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be use for processing of next daily, then the retention will be not greater than 10 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be use for processing of next daily, which is also used for processing of weekly runs, then the retention will be not greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, then the retention will not be greater than 20 days. If cycle in which a program or series of programs creating output is daily, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, then the retention will be not greater than 20 days. If cycle in which a program or series or programs creating output is weekly, and the created magnetic tape file will be used for processing of next weekly, which is also used for processing of monthly runs, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, then the retention will be not greater than 30 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of quarterly runs, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of Semi-Annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is monthly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is monthly, and the created magnetic tape file will be used for processing of next monthly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program of series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, then the retention will be not greater than 90 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of semi-annual run, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If cycle in which a program or series of programs creating output is quarterly, and the created magnetic tape file will be used for processing of next quarterly, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is semi-annual, and the created magnetic tape file will be used for processing of next semi-annual, then the retention will be not greater than 190 days. If cycle in which a program or series of programs creating output is semi-annual, and the created magnetic tape file will be used for processing of next semi-annual, which is also used for processing of annual runs, then the retention will be not greater than 365 days. If created magnetic tape file will be used for processing of permanent history, then the retention will be not greater than 999 days. If cycle in which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, then the retention will be not greater than 365 days. If cycle is which a program or series of programs creating output is annual, and the created magnetic tape file will be used for processing of next annual, which is also used for processing of permanent history, then the retention will be not greater than 999 days. If the program or series of programs creating output is a one time run, and the file will be used for processing as required, then the retention will be lowest possible

retention commensurate to job completion. If the program or series of programs creating output is compile card image or SOLT tapes, and the created magnetic tape file will be used for processing as required run, then the retention will be not greater than 90 days maximum. If cycle in which a program or series of programs creating output is as required runs, and the created magnetic tape file will be used for processing as required, the retention will be lowest possible retention commensurate to job completion. If the program or series of programs creating output is test files, and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 30 days. If the program or series of programs creating output is print/punch backup and the created magnetic tape file will be used for processing as required, then the retention will be not greater than 10 days. In addition, for civilian personnel at base level (CCPO), master personnel files for prospective employees are transfered to the active file upon appointment of the employee or in the event the employee is not appointed and will no longer be considered a candidate for appointment, are destroyed by degaussing—master personnel files for active employees are transferred to the separated employee history file where they are retained for three years subsequent to separation and then destroyed by degaussing. The notification of personnel action—Standard Form 50—is disposed of as directed by OPM—work files and records such as the employee career brief, position survey work sheet, retention register work sheet, alphabetic and Social Security Number locator files, and personnel and position control register are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning-work sheets pertaining to qualification and retention registers are disposed of as directed by OPM—transitory files such as pending files, and recovery files are destroyed after use by degaussing—files and records retrieved through general retrieval systems are destroyed after use by tearing into pieces, shredding, pulping, macerating, or burning. Those records at AF Manpower and Personnel Center for the end of each fiscal year quarter are retained for five years before destroying by deletion—the separated employee file retains employee information at time of separation for five years after which the employee's record is destroyed by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Manpower and Personnel, Headquarters United States Air Force. Subordinate System Managers are: A. Director of Personnel Data Systems, Assistant Deputy Chief of Staff for Personnel for Military Personnel, Air Force Manpower and Personnel Center (AFMPC), Randolph Air Force Base, TX, 78150. He is responsible for overall PDS design, maintenance and operation, and is designated the Automated Data Processing System Manager for all Air Force personnel data system. B. The Director of Personnel Data Systems at each Major Command headquarters for systems operated at that level. C. The Chief, CBPO, at Air Force installations for systems operated at the level. D. The Civilian Personnel officer at Air Force installations for civilian systems operated at that level.

NOTIFICATION PROCEDURE:

Requests from individuals for notification as to whether the system contains a record on them should be addressed to the System Manager of the operating level with which they are concerned. Persons submitting such a request, either personally or in writing, must provide SSN, name, and military status (active, ANG/USAFR, retired, etc. ANG members not on extended active duty may submit such requests to the appropriate State Adjutant General or the Chief of the servicing ANG CBPO. USAFR personnel not on extended active duty may submit such requests to ARPC, Denver, CO, 80280 or, if unit assigned, to the Chief of the servicing CBPO or Consolidated Reserve Personnel Office. Personal visits to obtain notification may be made to the Military Records Review Room, Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150, the Military Records Review Room, Air Reserve Personnel Center, Denver, CO 80280; The Office of the Director, National Personnel Records Center (NPRC), 111 Winnebago St., St. Louis, MO, 63118; the office of the Director of Personnel Data Systems at the appropriate major command headquarters; or the office of the Chief of his servicing CBPO. Identification will be based on presentation of DD Form 2AF, Military Identification Card. Air Force civilian employees must provide SSN, full name, previous names if any, last date and location of Air Force civilian employment if not currently employed by the Air Force—current employees should submit such requests to their CCPO—former employees of the Air Force should submit such requests to the CCPO for the last Air Force installation at which they were employed. Authorizations for a person other than the data subject to have access to an individual's records must be based on a notarized statement signed by the data subject.

RECORD ACCESS PROCEDURE:

Assistance in gaining access to his records will be provided the individual by the appropriate subordinate System Manager at AFMPC, ARPC, NRPC, major command or CBPO/CRPO/CCPO.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, medical institutions, automated system interfaces, police and investigating officers, the bureau of motor vehicles, a state or local government and source documents such as reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F035 AF MP C

SYSTEM NAME:

035 AF MP C Military Personnel Records System.

SYSTEM LOCATION:

Headquarters United States Air Force, Washington DC 20330. Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150. Air Reserve Personnel Center, Denver, CO 80280. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132. Headquarters of the major commands and separate operating agencies. At consolidated base personnel offices and other installation units. At State Adjutant General Office of each respective State, District of Columbia or Commonwealth of Puerto Rico. At Air Force Reserve and Air National Guard units. Official mailing addresses are in the Department of Defense Directory in the Appendix to the Air Force's Systems Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military peronnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Correspondence and Miscellaneous Document Group (C&M) at Air Force Military Personnel Center (AFMPC); Headquarters United States Air Force (HQ USAF) Selection Record Group (SR) at HQ USAF Assistant for General Officer Matters; Retired Air Force general officers. Master Personnel Record Group (MPeRGp) at AFMPC: active duty colonels at HQ USAF, Assistant for Senior Officer Management, C&M at AFMPC Air Force active duty officer personnel. MPeRGp at AFMPC Officer Command Selection Record Group (OCSR) at the respective major command or separate operating agency, Field Record Group (FRGp) at the respective Air Force base of assignment/servicing Consolidated Base Personnel Office (CBPO); Air Force active duty enlisted personnel. MPeRGp at AFMPC, FRGp at respective servicing CBPO, Senior Noncommissioned Officer (NCO) Selection Folder at the respective servicing CBPO; personnel in Temporary Disability Retired List (TDRL) status, Missing in Action (MIA), Prisoner of War (POW), Dropped From Rolls (DFR), MPeRGp at AFMPC; Reserve officers MPeRGp at Air Reserve Personnel Center (ARPC), OCSR at the respective Air Force (AF) major command (MAJCOM) when applicable, FRGp at the respective unit of assignment or servicing CBPO or Consolidated Reserve Personnel Office (CRPO); Reserve airmen MPeRGp at ARPC, FRGp at the respective unit of assignment or servicing CBPO/CRPO; Air National Guard (ANGUS) officers MPeRGp at ARPC, OCSR at the respective State Adjutant General Office, FRGp at the respective unit of assignment, ANGUS airmen MPerGp at the respective State Adjutant General Office FRGp at the respective unit of assignment; Retired Air Force military personnel; Discharged personnel MPerGp at National Personnel Records Center (NPRC); Air Force Academy cadets MPerGp at unit of assignment CBPO. System contains substantiating documentation such as forms, certificates, administrative orders and correspondence pertaining to appointment as a commissioned officer, warrant officer, Regular AF, AF Reserve or ANGUS; enlistment/reenlistment/extension or enlistment; assignment Permanent Change of Station (PCS)/Temporary Duty (TDY); promotion/demotion; identification card requests; casualty; duty status changes—Absent Without Leave (AWOL)/MIA/POW-Missing-Deserter; military test administration/results; service dates; separation; discharge; retirement; security; training, Precision Measurement Equipment (PME), On-The-Job Training (OJT), Technical, General Military Training (GMT), commissioning, driver; academic education; performance/effectiveness reports; records corrections—formal/informal; medical or dental treatment/examination; flying/rated status administration; extended active duty; emergency data; line of duty determinations; human/personnel reliability; career counseling; records transmittal; AF reserve administration; Air National Guard administration; board proceedings; personnel history statements; Veterans Administration compensations; disciplinary actions; record extracts; locator information; personal clothing/equipment items; passport; classification; grade data; Career Reserve application/cancellations; traffic safety; Unit Military Training; travel voucher for TDY to Republic of Vietnam; dependent data; professional achievements; Geneva Convention cards; drug abuse; Federal insurance; travel and duty restrictions; Conscientious Objector status; decorations and awards; badges; Favorable Communications (colonels only); Inter-Service transfers; pay and allowances; combat duty; leave; photographs; Personnel Data System products.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Power and duties; delegation by; implemented by Air Force Regulation 35–55, Military Personnel Records System.

PURPOSE(S):

Military Personnel Records are used at all levels of Air Force personnel management within the agency for actions/processes related to procurement, education and training, classification, assignment, career development, evalution, promotion, compensation, sustentation, separation and retirement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Compensation claims submitted to Veterans Administration Regional Offices; dependents and survivors requesting issuance or determination of eligibility for identification card privileges; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) eligibility and benefits requests—copies are provided to CHAMPUS, Denver, CO; Immigration and Naturalization—copies are provided to respective local immigration Office; Unemployment Compensation Requests—verification of service related information provided to State Unemployment Compensation (UCX) Office; Vietnam State Bonus—information provided to respective local State offices; Civil Service requests for verification of military service for benefits; leave or Reduction in Force (RIF) purposes—Worldwide locator inquiries; Dual compensation cases involving former officers—provided to establish Civil Service employee tenure and leave accrual rate; Social Security Retirement Credit Verification—verification of service data provided to substantiate applicant's credit for Social Security compensation; Soldiers and Sailors Civil Relief Act requests—verification of service—Information as to current military address and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur. Information is provided to the US Department of Agriculture for investigative and audit procedures. Separation information provided to the Veteran's Administration and Selective Service Agencies. American National Red Cross—information to local Red Cross offices for emergency assistance to military members, dependents, relatives or other persons if conditions are compelling. Department of Labor, Bureau of Employees' compensation—medical information for claims of civilian employees formerly in military services; Employment and Training Administration—verification of service-related information for unemployment compensation claims; Labor Management Services Administration for investigations of possible violations of labor laws and pre-employment investigations; National Research Council—for medical research purposes; U.S. Soldiers' and Airman's Home—service information to determine

eligibility; used by Veterans Administration for research.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, placed in metal file containers or on open shelves. Microfiche placed in rotary power files; computer disk resident data file consists of Social Security Number (SSN) and disk location of the associated image record which includes document data describing document type, date, location, and number of pages in each document.

RETRIEVABILITY:

Information in the system is retrieved by last name, first name, middle initial and Social Security Number (SSN). Records stored at National Personnel Records Center are retrieved by registry number, last name, first name, middle initial and SSN.

SAFEGUARDS:

The prescribing directive for the Military Personnel Records System requires those records to be stored (after duty hours) in a locked building, room or filing cabinets. Access is specifically limited to those personnel designated by the Consolidated Base Personnel Office (CBPO) Chief and those provisions for access and release of information contained in Air Force Regulation 12–35 and 31–4.

RETENTION AND DISPOSAL:

Users who are granted access to the microfiche files are screened by computer software. Those documents designated as Temporary in the prescribing directive remain in the records until their obsolescence (superseded, member terminates status, or retires) when they are removed and provided to the individual data subject. Those documents designated as Permanent remain in the military personnel records system permanently and are retired with the master personnel record group.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff Personnel for Military Personnel, Randolph Air Force Base, TX 78150.

NOTIFICATION PROCEDURE: The individual data subject may be notified that a record exists on him by submitting a request to or appearing in person at the responsible official's office or the respective repository for records for personnel in particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. Response to written requests will be provided not later than ten days following receipt of request. The System Manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas.

RECORD ACCESS PROCEDURES:

The same written notification or personal visit procedures which apply to notification also apply to access.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system include data subject's applications, requests, personal history statements, supervisors' evaluations, correspondence generated within the agency in the conduct of official business, medical treatment records, educational institutions, civil authorities, other service departments, and interface with the Personnel Data System.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F045 MPC A

SYSTEM NAME:

045 MPC A Educational Delay Board Findings.

SYSTEM LOCATION:

Air Force Manpower and Personnel Center, Randolph Air Force Base, TX 78150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve Officers' Training Corps (AFROTC) Cadets and/or AFROTC graduates (officers)

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for delay in entering extended active duty status to pursue advanced degrees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2108, Advanced standing; interruption of training; delay in starting obligated service; release from program, and 50 Appendix 456, Deferments and exemptions from training and service, as implemented by Air Force Regulation 33–3, Enlistment in the United States Air Force.

PURPOSE(S):

Used to inform applicants of results of Board action on their request for delay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained invisible file binders/ cabinets.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Disapproved applications are destroyed after 6 months; approved applications are destroyed on completion of delay.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/ Manpower and Personnel for Military Personnel, Randolph Air Force Base, TX 78150.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Member's application.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F125 AF SP K

SYSTEM NAME:

125 AF SP K Vehicle Administration Records.

SYSTEM LOCATION:

Chief of Security Police at the installation where an individual registers or frequently operates a vehicle. Information copies of some portions of this system may be kept an an individual's assigned unit. Official mailing addresses are in the Department of Defense Directory in the appendix to the Air Forces' system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who frequently drive or register vehicles on an Air Force installation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vehicle registration records, driver records, letters of suspension or revocation as applicable, and forms or letters which are necessary in the vehicle administration program for driver improvement actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by.

PUPOSE(S):

Used to record an individual's statement of understanding on financial responsibilities with regard to operation of a vehnicle on an Air Force installation. Driver records are maintained to record information about motor vehicle accidents and moving traffic violations that are used to provide for traffic point assessment, suspension, or revocation, or other driver improvement actions affecting driving privileges on Air Force installations.

Note. In the State of Alaska, the system is also used to ensure that individuals comply with state law on the Alaskan Emission Inspection Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force. Records from this system of records may be disclosed to state or local law enforcement agencies or to motor vehicle bureaus.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files and and on computer and computer output products.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their offical duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets and maintained on computer and computer output products. Manual records are stored in locked cabinets or rooms. Automated records are controlled by computer system software.

RETENTION AND DISPOSAL:

Private vehicle registration documentation is destroyed after departure of the registrant to a new duty station, upon termination of an individual vehicle registration, or at the end of the particular registration period. Driver records on employees are transferred to gaining installations when an individual is reassigned or transferred. These are destroyed on permanent separation from active service, termination of employment, or upon deletion of all entries. Destruction of these forms is done by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Air Force Office of Security Police, Kirtland Air Force Base, NM 87117.

NOTIFICATION PROCEDURE:

Contact the installation Chief of Security Police for information. When requesting information in writing, individual should include full name, Social Security Number, military, status, home address, and the letter must be notarized. During a personal visit, individual will be required to produce military ID, if applicable, a valid drivers license, or other appropriate proof of identity.

RECORD ACCESS PROCEDURES:

Individual can obtain assistance in gaining access from the System Manager. Contact the Chief of Security Police at the appropriate installation. Mailing addresses are in the Deprtment of Defense directory in the appendix to the Air Force's systems notices.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for constesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from police and investigating officers and from the bureau of motor vehicles.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F160 DODMERB A

SYSTEM NAME:

160 DODMERB A Department of Defense Medical Examination Review Board Medical Examination Files.

SYSTEM LOCATION:

Department of Defense Medical Examination Review Board (DODMERB) US Air Force Academy, CO 80840–6518 and Camp Hill, PA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants to the five service academies, the Four year Reserve Officer Training Corps (ROTC) Scholarship Program for, Uniform Services University of Health Sciences (USUHS), Army, Navy, Air Force College Scholarship Program (CSP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Report of the Medical Examination, Report of Medical History, Report of Dental Examination, to include dental x-rays and any associated civilian forms or medical tests that have been accomplished; may also contain personal correspondence between the DODMERB and the applicant, parents/guardian concerning the applicant's medical history or qualification status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Executive department.

PURPOSE(S):

The medical examination in computer form is used to determine medical accceptability for one or more of the five military service academies or the ROTC, USUHS, CSP for the Air Force, Army and Navy ROTC. The computer also produces products to advise each program manager of initial status and all update actions on the applicant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Medical consultations concerning may be necessary with parents/legal guardians may be necessary to clarify/explain applicant's medical status. Examinations may be released to civilian contract agents of the government and private physicians associated with medically certifying applicants for military service. Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in computer and electronic digital imaging storage system.

RETRIEVABILITY:

Filed by Name and Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Computer is in a controlled area with restricted access and data is protected by computer system software.

RETENTION AND DISPOSAL:

A paper copy of medical and dental records will be generated by computer on all appointed candidates and will be forwarded to each program the applicant is medically certified for. Computer and optical disk files for all applicants will be retained for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Defense Medical Examination Review Board, US Air Force Academy, CO 80840–6518.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulations 12–35.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F215 AFA A

SYSTEM NAME:

215 AFA A Library Authorized Patron File.

SYSTEM LOCATION:

USAF Academy Library, United States Air Force Academy, Colorado Springs CO 80840–5721.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Academy military and civilian personnel and cadets, specially authorized nonbase library patrons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social security number, library card number, name, base or home address, privilege code, statistical code, base organizational affiliation code, telephone number(s), expiration date, number of cards issued, service code (if appropriate), graduate school code (if appropriate) for special borrowers, and dfsiv training code (if appropriate). Expiration data for special borrower privileges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 United States Code Chapter 903, United States Air Force Academy.

PURPOSE(S):

Used by Library and Visual Information personnel to fully identify patrons to whom library material is charged in operation of the Library's automated circulation control system, to follow up on delinquent borrowers by generation of overdue notices, and to clear departing patrons and delete their names from the file, and to issue library cards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer and computer output products, and on paper application forms.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for library circulation control operation in the performance of their office duties. Computer storage devices are protected by computer system software. Paper files are stored in locked cabinets in restricted areas.

RETENTION AND DISPOSAL:

Partron data is deleted from master files maintained on computer when outgoing clearance is accomplished. Paper forms are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Academy Libraries, USAF Academy, Colorado Springs CO 80840.

NOTIFICATION PROCEDURE:

Request from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and is published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

F900 TAC A

SYSTEM NAME:

900 TAC A Special Awards File.

SYSTEM LOCATION:

Headquarters Tactical Air Command, Langley Air Force Base, VA 23665.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, civilian employees and retired Air Force officers who are or were formerly assigned to Tactical Air Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical file containing limited award and biographical data on TAC personnel where awards have been approved and may be used for reference in future. File is informational in nature and action does not result therefrom.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by and 8074, Commands: Territorial

organization, and Air Force Regulation 900–48, Decorations, Service and Achievement Awards, Unit Awards, Special Badges, and Devices, TAC Sup 1, and Air Force Regulation 900–29, Special Trophies and Awards, TAC Sup 1.

PURPOSE(S):

Used by Command Awards Branch for reference.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff, Personnel, Tactical Air Command, Langley Air Force Base, VA 23665.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the System Manager.

RECORD ACCESS PROCEDURE:

Individual can obtain assistance in gaining access from the System Manager.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers and source documents such as reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–11696 Filed 5–22–86; 8:45 am]

BILLING CODE 3810–01–M

USAF Scientific Advisory Board; Meeting

May 14, 1986.

The USAF Scientific Advisory Board Weapons Panel will meet at the Center for Naval Analyses, 4401 Ford Ave, Alexandria, VA on June 18–19, 1986, from 8:00 A.M. to 5:00 P.M. each day.

The purpose of this meeting is to discuss topics identified by Project Forecast II for possible technology development programs.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11630 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 16, 1986.

The meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Current and Potential Future Technology to Protect Air Force Space Missions from Current and Future Space Debris, published in the **Federal Register** May 8, 1986 (51 FR 17078) has been changed to July 8 and 9, 1986. Meeting location has also been changed to the Pentagon, Washington, DC. All other information remains the same.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11624 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

Intent To Grant Partially Exclusive Patent License; TACAN Aerospace Corporation

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulations (32 CFR Part 841, 1 July 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Number 4,462,103 entitled "Tunable CW Semiconductor Platlet Laser," issued 24 July 1984 to Michael M. Salour, Charles B. Roxlo and Dick Bebelaar.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar and fifty cents ($1.50) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324, Telephone No. 202–475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11626 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

Intent To Grant Partially Exclusive Patent License; TACAN Aerospace Corporation

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulations (32 CFR Part 841, 1 July 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Number 4,495,782 entitled "Transmissive Dewar Cooling Chamber For Optically Pumped Semiconductor Ring Laser," issued 29 January 1985 to Michael M. Salour and Adrian Fuchs.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar and fifty cents ($1.50) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW.,

Washington, DC 20324, Telephone No. 202–475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11628 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

Intent To Grant Partially Exclusive Patent License; TACAN Aerospace Corporation

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulations (32 CFR Part 841, 1 July 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Number 4,461,006 entitled "Synchronously Pumped Mode-Locked Platelet Laser," issued 17 July 1984 to Michael M. Salour and Charles B. Roxlo.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar and fifty cents ($1.50) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324, Telephone No. 202–475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11627 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

Intent To Grant Partially Exclusive Patent License; TACAN Aerospace Corporation

Pursuant to the provisions of § 841.14 of Title 32, Code of Federal Regulations (32 CFR Part 841, 1 July 1985), the Department of the Air Force announces its intention to grant to TACAN Aerospace Corporation of Carlsbad, California, a corporation of the State of California, a royalty bearing partially exclusive license under United States Patent Number 4,408,464 entitled "DEWAR Cooling Chamber For Semiconductor Platlets," issued 11 October 1983 to Michael M. Salour and Charles B. Roxlo.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed in writing to the addressee set forth below within 60 days from the publication of this notice. Also copies of the patent may be obtained for one dollar and fifty cents ($1.50) from the Commissioner of Patents and Trademarks, Washington, DC 20231.

All communications concerning this notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324, Telephone No. 202–475–1386.

Pasty J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–11626 Filed 5–22–86; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Agency Information Collection Activities Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB to review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Membership in Military Affiliate Radio System (MARS)

DD 630

The information is necessary to assess the applicant's qualifications to meet membership criteria outlined in Naval Telecommunications Procedures Manual. Information gathered is used by officials to certify eligibility for membership.

Individuals

Responses 1,000.
Burden hours 375.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. A.R. Delperdang, Naval Telecommunications Command Headquarters (MARS), 4401 Massachusetts Avenue, NW., Washington, DC 20390, telephone (301) 238–2236.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 20, 1986.

[FR Doc. 86–11699 Filed 5–22–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 23, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 20, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Chapter 1 of the Education Consolidation and Improvement Act—Final Regulations.

Agency Form Number: NA.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Response: 5,000; Burden Hours: 20,000.

Recordkeeping Burden: Recordkeeping: 0; Burden Hours: 0.

Abstract: Chapter 1 of Education Consolidation and Improvement Act requires local educational agencies (LEAs) to consult with parents as they design and implement their Chapter 1 projects. To meet this requirement, LEAs must develop written policies to ensure parental participation.

[FR Doc. 86-11708 Filed 5-22-86; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Application Notice Establishing Closing Date for Transmittal of New Experimental and Innovative Training Project Applications for Fiscal Year 1986

AGENCY: Department of Education;

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and the closing date for transmittal of applications for new projects under the Experimental and Innovative Training Program administered by the Department of Education under the Office of Special Education and Rehabilitative Services. Awards are made under the program to support projects to: (1) Develop new types of rehabilitation personnel and demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely disabled persons; and (2) develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies. Eligible applicants are State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education. The authority for this program is section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774)

The total amount of funds available for rehabilitation training in fiscal year 1986 is $25,838,000. Of this amount, approximately $500,000 will be reserved for experimental and innovative training projects that address the proposed priority published in this issue of the **Federal Register.** It is estimated that 4 projects will be funded at an average cost of $125,000.

These estimates do not bind the Department to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

All applications will be evaluated according to selection criteria which appear in program regulations in 34 CFR 387.30.

Instructions for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 8, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.129Y), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant for a new award will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building ROB #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 on the closing date.

Application Forms: Application forms and program information packages are expected to be available by May 23, 1986. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, Mary E. Switzer Building, (2312), Washington, DC 20202. Telephone: (202) 732-1343.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Experimental and Innovative Training Program (34 CFR Parts 385 and 387). A notice of proposed priority was published on May 21, 1986 at 51 FR 18651. If substantive changes are made to the proposed funding priority when published in final form, applicants will be given an opportunity to amend or resubmit their applications to address the revised funding priority.

Further Information: Delores L. Watkins, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3324-M/S 2312, Mary E. Switzer Building), Washington, DC 20202. Telephone: (202) 732-1332.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

(29 U.S.C. 774)

Dated: May 21, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86-11700 Filed 5-22-86; 8:45 am]

BILLING CODE 4000-01-M

Application Establishing Closing Date for Transmittal of New Rehabilitation Long-Term Training Project Applications for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application notice establishing closing date for transmittal of new rehabilitation long-term training project applications for fiscal year 1986.

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of programmatic and fiscal information and the closing date for the transmittal of applications for new projects in the field of Rehabilitation Workshop and Facility Personnel under the Rehabilitation Long-Term Training Program. Awards are made under the program to support projects to train personnel for employment in public and private agencies involved in the rehabilitation of physically and mentally disabled individuals, especially those who are the most severely disabled. Eligible applicants are State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education. The authority for this program is section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774.)

The total amount of funds available for rehabilitation training in fiscal year 1986 is $25,838,000, including $6,669,000 for the funding of new rehabilitation long-term training projects. Of this amount, approximately $500,000 will be reserved for rehabilitation workshop and facility personnel projects that respond to the proposed priority published in this issue of the **Federal Register**. It is estimated that 5 projects will be funded at a average cost of $100,000.

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

All applications will be evaluated according to selection criteria which appear in program regulations in 35 CFR 386.30.

Instructions for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 8, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.129X), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant for a new award will be notified that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC) daily, except Saturdays Sundays, and Federal holidays. An application that is hand-delivered will not accepted after 4:30 p.m. on the closing date.

Application Forms: Applications forms and program information packages are expected to be available by May 23, 1986. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, Room 3332, Mary E. Switzer Building (2312), Washington, DC 20202. Telephone: (202) 732–1343.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386). A notice of proposed priorty was published on May 20, 1986 at 51 FR 18549. If substantive changes are made to the proposed funding priority when published in final form, applicants will be given an opportunity to amend or resubmit their applications to address the revised funding priority.

Further Information: Delores L. Watkins, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3324–M/S 2312, Mary E. Switzer Building), Washington, DC 20202. Telephone: (202) 732–1332.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

Dated: May 20, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86–11709 Filed 5–22–86; 8:45 am]

BILLING CODE 4000–1–M

Application Establishing Closing Date for Transmittal of New Rehabilitation Long-Term Training Project Applications for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application notice establishing closing date for transmittal of new rehabilitation long-term training project applications for fiscal year 1986.

Programmatic and Fiscal Information

The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and the closing date for transmittal of applications for new projects in the field of Rehabilitation Counseling under the Rehabilitation Long-Term Training Program. Awards are made under this program to support projects to train personnel for employment in public and private agencies involved in the rehabilitation of physically and mentally disabled individuals, especially those who are the most severely disabled. Eligible applicants are State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education. The authority for this program is Section 304 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 774.)

The total amount of funds available for rehabilitation training in fiscal year 1986 is $25,838,000, including $6,669,000 for the funding of new rehabilitation long-term training projects. Of this amount, approximately $2,700,000 will be reserved for and distributed among rehabilitation counseling projects that respond to proposed priorities published on April 25, 1986 at 51 FR 15665–15666. It is expected that funds to be made available in the field of rehabilitation counseling will be distributed among the 3 proposed priority areas published in the **Federal Register** as follows: *Priority 1*—$1,800,000 for rehabilitation counseling training that emphasizes linkages with business and industry; *Priority 2*—$500,000 for rehabilitation counseling personnel training with an emphasis on specialization in providing supported employment services; and *Priority 3*—$400,000 for rehabilitation counseling training at the doctoral level. An estimated 40 projects will be funded at an average cost of $65,000.

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statue or regulations.

All applications will be evaluated according to selection criteria which appear in program regulations in 34 CFR 386.30.

Instructions for Transmittal of Applications

Applications for new awards must be mailed or hand-delivered on or before July 8, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.129B), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant for a new award will be notifed that its application will not be considered.

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington DC, time) daily, except Saturdays, Sundays, and Federal hoildiays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Application Forms: Application forms and program information packages are expected to be available by May 23, 1986. These may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, Mary E. Switzer Building (2312), Washington, DC 20202. Telephone: (202) 732–1343.

Application forms and program information packages for new awards will be mailed to grantees who are completing long-term training projects in the field of rehabilitation counseling during the 1985–1986 academic year.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Education Department General Adminsitrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386). A notice of proposed priorities was published on April 25, 1986 at 51 FR 15665–15666. If substantive changes are made to the proposed funding priorities when published in final form, applicants will be given an opportunity to amend or resubmit their applications to address the revised funding priorities.

Further Information: Delores L. Watkins, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3324–M/S 2312, Mary E. Switzer Building), Washington, DC 20202. Telephone: (202) 732–1332.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

Dated: May 20, 1986.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 86–11710 Filed 5–22–86; 8:45 am]

BILLING CODE 4000–1–M

Office of Special Education and Rehabilitation Services

Rehabilitation Long-Term Training Program

Correction

In FR Doc. 86–11457 appearing on page 18549 in the issue of Tuesday, May 20, 1986, the DATE caption should read: "DATE: Comments must be received on or before June 19, 1986."

BILLING CODE 1505–01–M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee on U.S. Oil and Gas Outlook; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Oil and Gas Outlook will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Oil and Gas Outlook will function as the coordinating and integrating function of the task group activities. It will also be responsible for development of recommendations as to actions which are indicated for avoiding or mitigating future crises with respect to oil and gas supply and demand.

The Coordinating Subcommittee on U.S. Oil and Gas Outlook will hold its second meeting on Tuesday, June 24, 1986, immediately following the adjournment of the Committee on U.S. Oil and Gas Outlook meeting, which will begin at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Coordinating Subcommittee on U.S. Oil and Gas Outlook meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Oil and Gas Outlook is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee on U.S. Oil and Gas Outlook will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 16, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–11669 Filed 5–22–86; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will be addressing the current activities of all task groups and providing guidance for future studies. Its analysis and findings will be basd on information and data to be gathered by the various task groups.

The Coordinating Subcommittee on U.S. Petroleum Refining will hold its twelfth meeting on Tuesday, June 10, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Coordinating Subcommittee on U.S. Petroleum Refining meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee on U.S. Petroleum Refining is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public

who wishs to file a written statement with the Coordinating Subcommittee on U.S. Petroleum Refining will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 16, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-11667 Filed 5-22-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Future Supply/Demand Factors Task Group; Meeting

Notice is hereby given that the Future Supply/Demand Factors Task Group will meet in June 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Future Supply/Demand Factors Task Group's activities will be to identify the major factors that will affect the U.S.'s future supply and demand of oil and gas and to evaluate the influence such factors could have on the vulnerability of the U.S. to future energy crises.

The Future Supply/Demand Factors Task Group will hold its second meeting on Monday, June 23, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Future Supply/Demand Factors Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review progress of Task Group study assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Future Supply/Demand Factors Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly, conduct of business. Any member of the public who wishes to file a written statement with the Future Supply/Demand Factors Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickerson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 16, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-11668 Filed 5-22-86; 8:45 am]

BILLING CODE 6450-01-M

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Working Party (IWP) of the International Energy Agency (IEA) will be held on June 2, 1986, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. New chairman.
3. Oil trading methods, their impact on the industry and on the market.
4. Monitoring, analysis and presentation of oil price trends.
5. How to present refinery utilization trends.
6. Future work program.

II. A meeting of the IWP will be held on June 2, 1986, at the offices of the IEA at the aforesaid address beginning at 2:00 p.m. and continuing on June 3. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IWP at a meeting of the IEA Standing Group on the Oil Market (SOM) which is bing held in Paris on those dates. The agenda for the meeting is under the control of the SOM. It is expected that the following agenda will be followed:

1. Adoption of provisional agenda.
2. Approval of the Summary Record of the 51st Session.
3. Current oil market developments.

(a) —1985 Annual Oil Market Report.

—End-May Oil Market Report.

—Complementary oral report by the IEA Secretariat.

(b) —Short- and medium-term oil market outlook.

—Consultation with Petro-Canada Ltd.: Presentation by Mr. W.H. Hopper, Chairman of the Board and Chief Executive Officer.

4. Impact of lower oil prices.

(a) Assessment of short- and medium-term impact on the oil consumption, production, and upstream investment in OECD countries.

—Secretariat introduction and country presentations.

(b) Impact of lower oil prices on oil company finances.

—Presentation by Mr. Dillard Spriggs, President, Petroleum Analysis Ltd.

5. Oil pricing and trading.

(a) Recent trends in oil pricing and trading.

—Secretariat note.

—Analysis of latest Crude Oil Register data.

—Comments by the IWP.

(b) Trading methods and market transparency.

—Presentation by Mr. M.S. Robinson, President, Shell International Trading Company.

6. Monitoring of oil product markets and related developments.

(a) Recent developments in oil product supply and refining.

—IEA Secretariat Quarterly Report.

—Comments by the IWP on the oil products monitoring methodology.

(b) Presentations by delegations on the refining sector, product supply market structure, and relevant government practices.

7. Round-table reports.

—Country presentations on notable developments in the oil sector and member countries.

8. SOM program of work for 1987.

—Secretariat note.

9. Date of next meeting.

It is expected that representatives of the IWP will be present for discussion of agenda items 5(a) and 6(a) and possibly other agenda items.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IWP meeting is open only to representatives of members of the IWP, their counsel, employees of the Departments of Energy, Justice, State, the Federal Trade Commission, and the Genera Accounting Office.

representatives of committees of Congress, employees of the IEA, representatives of the Commission of the European Communities, and invitees of the IWP or the IEA. The SOM meeting is open only to the aforesaid persons, representatives of members of the SOM, and invitees of the SOM.

Issued in Washington, DC, May 20, 1986.

J. Michael Farrell,

General Counsel.

[FR Doc. 86-11755 Filed 5-22-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-32-NG]

Phibro Energy, Inc.; Application to Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 1, 1986, of an application filed by Phibro Energy Inc. (Phibro), a wholly-owned subsidiary of Phibro-Salomon Inc., for blanket authorization to import up to 200 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers, including gas distributors, pipelines, electric utilities, and industrial or agricultural users. Phibro would act either as an importer or reseller, as agent on behalf of Canadian producers and pipeline, or as agent on behalf of domestic purchasers. The specfic terms of each import and sale would be negotiated on an individual basis including the price and volumes. Phibro proposes to make quarterly reports to the ERA.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on June 23, 1986.

FOR FURTHER INFORMATION:

Chuck Boehl, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6050

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9478. They must be filed no later than 4:30 p.m., June 23, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If any additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Phibro's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc 86-11636 Filed 5-22-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES86-40-000 et al.]

Electric Rate and Corporate Regulation Filings; MDU Resources Group, Inc., et al.

May 19, 1986.

Take notice that the following filings have been made with the Commission:

1. MDU Resources Group, Inc.

[Docket No. ES86-40-000]

Take notice that on May 6, 1986, MDU Resources Group, Inc. (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of Federal Power Act, seeking an Order authorizing the issuance of approximately 18,000,000 shares of Common Stock, par values $5,

in connection with a two-for-one Common Stock splilt.

Comment date: June 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. MDU Resources Group, Inc.

[Docket No. ES86-41-000]

Take notice that on May 8, 1986, MDU Resources Group, Inc. (Applicant), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act (Act), seeking an Order authorizing the issuance of an aggregate of no more than $100,000,000 principal amount of one or more series of its First Mortgage Bonds and an exemption from competitive bidding.

Comment date: June 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Upper Peninsula Generating Company

[Docket No. ES86-39-000]

Take notice that on May 5, 1986, Upper Peninsula Generating Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue short-term notes and banker's acceptance in an aggregate principal amount up to $60,000,000 to be issued on or before July 1, 1988, and will have a final maturity date not later than July 1, 1989.

Comment date: June 4, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11674 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2155-000]

John N. Nordstrom; Amended Filing

May 19, 1986.

Take notice that on May 1, 1986, John N. Nordstrom tendered for filing an amended application for authority to hold the following interlocking directorates:

Position	Name of corporation	Classification
Director	Puget Sound Power and Light Company.	Public Utility
Director	Seafirst Corporation.	a subsidiary of Seafirst's parent corporation has placed commercial paper or certain public utilities as a placement agent for the issuer; a foreign third-tier subsidiary of Seafirst's parent corporation has underwritten or participated in the marketing of public utility securities outside of the United States; and other foreign second-, third-, and fourth-tier subsidiaries and affiliates of Seafirst's parent corporation are authorized to participate in the marketing of public utility securities outside of the United States.
Director	Seattle First National.	a subsidiary of parent corporation Bank has placed commercial paper of certain public utilities as placement agent for the issuer; a foreign third-tier subsidiary of parent corporation's parent corporation has underwritten or participated in the marketing of public utility securities outside of the United States; and other foreign second-, third-, and fourth-tier subsidiaries and affiliates of parent corporation's parent corporations are authorized to participate in the marketing of public utility securities outside of the United States.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 4, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11677 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Texas Eastern Transmission Corp.) Order Granting Request for Waiver

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Issued: May 19, 1986

On April 11, 1986, Texas Eastern Transmission Corporation filed a request for waiver of the transitional provisions of Order No. 436 [1] as they apply to a transportation transaction to be performed under former § 284.221 of the Commission's Regulations. We will grant Texas Eastern's request.

On October 1, 1985, Texas Eastern entered into a written agreement with Tennessee Gas Pipeline Company, a Division of Tenneco Inc., whereby Tennessee agreed to transport natural gas for Texas Eastern pursuant to former § 284.221 of the Commission's Regulations under authoriation issued on February 21, 1980, in Docket No. CP80-132, 10 FERC ¶ 61,166. The gas to be transported by Tennessee is purchased by Texas Eastern from three wells in Wharton County, Texas.

On September 23, 1985, Texas Eastern commenced constructing a pipeline in order to connect one of these wells to Tennessee's system. Construction was completed on October 8 at an approximate cost of $135,000.

We find that Texas Eastern, in its role as a purchaser, has expended substantial funds and constructed significant facilities before October 9, 1985, in reliance on a transportation agreement executed prior to that date.[2] Accordingly, we hereby waive the restrictions in § 284.105 to the extent necessary to permit the transportation

[1] 33 FERC ¶ 61,007 (1985); FERC Statutes and Regulations ¶ 30,665 (1985).

[2] *See* Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (CLARCO Gas Company, Inc.), 34 FERC ¶ 61,386 (March 28, 1986).

transaction identified in Texas Eastern's petition to commence.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11679 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Transok, Inc.); Order Denying Clarification

Issued: May 19, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On February 21, 1986, Transok, Inc., an Oklahoma intrastate pipeline company, filed a request for clarification with respect to the reporting requirements under Order No. 436 for continuing transportation arrangements under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Specifically, Transok requests clarification on whether it may continue transporting gas under section 311 for existing transactions beyond the transition period simply by filing a subsequent report pursuant to § 284.126(b), or at most, an initial report pursuant to § 284.126(a). Transok states that the Commission should not view the continuation of these existing "grandfathered" transactions as new transactions because they are merely a continuation of existing transactions. Transok states that if the Commission treats the continuation of these arrangements as new transactions, Transok would be required to pay $2,800 in filing fees.

We deny Transok's petition. Under the transition provisions, existing section 311 transportation arrangements terminate on the earlier of either (1) the original or extended term of the arrangement, or (2) October 9, 1987. Once those transportation arrangements terminate, they can be continued only as a new arrangement under Order No. 436 and are subject to the filing requirements and fees for new transportation arrangements. When the pipeline converts its on-going section 311 transportation to transportation under Order No. 436, it will have to file both an initial report under ¶ 284.126(a) and the rate information under § 284.123.[1] A subsequent report is not appropriate under these circumstances because the transportation would be performed under new authorization, the authorization in Order No. 436.[2]

By the Commmission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11680 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-64-001]

Algonquin Gas Transmission Co.; Compliance Filing

May 21, 1986.

Take notice that on May 12, 1986, Algonquin Gas Transmission Company (Algonquin) tendered for filing Original Sheet No. 551 to its FERC Gas Tariff, Second Revised Volume No. 1, in compliance with the Commission's Letter Order issued in the above-referenced docket on April 30, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 15, 1986.

Algonquin states that Original Sheet No. 551 complies with the Commission's directive by deleting the language "(after making allowance for applicable fuel reimbursement)". The effective date of the sheet is October 31, 1985.

Copies of this filing have been provided to Algonquin's customers under its FERC Gas Tariff, Second Revised Volume No. 1 and on all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 28, 1986 (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11706 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-59-001]

East Tennessee Natural Gas Co.; Tariff Revisions

May 21, 1986.

Take notice that on May 12, 1986, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Substitute First Revised Sheet No. 123 and Substitute Original Sheet No. 123A to Original Volume No. 1 of its FERC Gas Tariff, to be effective April 12, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 14, 1986.

East Tennessee states that the revised tariff sheets are in compliance with Ordering Paragraph (D) of the Commission's April 11, 1986, order issued on this proceeding and modify the new section 22.4 to its PGA provision to permit it to revise its rates on an interim basis in accord with the April 11th order.

East Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 28, 1986 (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11704 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-11-001]

K N Energy, Inc.; Motion To Place Tariff Sheets Into Effect

May 21, 1986.

Take notice that on May 13, 1986, K N Energy, Inc. (K N) filed a Motion to Place Tariff Sheets Into Effect in accordance with the Commission orders issued November 29, 1985 and April 30, 1986. K N submitted the following tariff

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[1] We note that under our current fees regulations, the pipeline's fee is the higher of these two fees, and not the sum of those fees. § 381.103(c)

[2] *See Phenix Transmission Company*, 35 FERC ¶ 61,124 (1986).

sheets to its FERC Gas Tariff, Third Revised Volume No. 1:

Substitute Twenty-Third Revised Sheet No. 4
Substitute Second Revised Sheet No. 4B.

According to § 381.103(b)(2)(iii), of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 15, 1986.

The rates shown on these tariff sheets reflect the elimination of the cost-of-service effect of all facilities not in service as of March 31, 1986. An effective date of May 1, 1986 is requested.

K N further states that no changes were required to be made to Third Revised Sheet No. 27B, Fourth Revised Sheet No. 27C and First Revised Sheet No. 27C, as filed in Docket No. RP86–11 and suspended by the Commission's November 29, 1985 order. Therefore, K N requests these sheets also be made effective May 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–11707 Filed 5–22–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86–58–002]

Midwestern Gas Transmission Co.; Tariff Revisions

May 21, 1986.

Take notice that on May 12, 1986, Midwestern Gas Transmission Company (Midwestern) tendered for filing Substitute Second Revised Sheet No. 164, Substitute Second Revised Sheet No. 165 and Substitute Original Sheet No. 165A to Original Volume No. 1 of its FERC Gas Tariff, to be effective April 12, 1986. According to § 381.103(b)(2) (iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until May 14, 1986.

Midwestern states that the revised tariff sheets are in compliance with Ordering Paragraph (D) of the Commission's April 11, 1986, order issued on this proceeding and modify the new Section 4 to its PGA provision to permit it to revise its rates on an interim basis in accord with the April 11th order.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 28, 1986 (18 CFR § 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–11705 Filed 5–22–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86–489–000]

Transcontinental Gas Pipe Line Corp.; Application

May 20, 1986.

Take notice that on May 7, 1986, as supplemented on May 12, 1986, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP86–489–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) a certain transportation service with "flexible authority" to add and/or delete sources of gas and/or receipt points, and (2) the operation of certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport on behalf of Lynchburg Gas Company (Lynchburg), on an interruptible basis, up to 10,000 dt equivalent of natural gas per day pursuant to a transportation agreement between Applicant and Lynchburg dated March 21, 1986, as amended April 1, 1986. Applicant states that Lynchburg has contracts to purchase such quantities of gas from Energy Marketing Exchange, Inc. (EME) and Transco Energy Marketing Company (TEMCO).

It is stated that pursuant to the transportation agreement, Applicant would receive the gas that Lynchburg purchases from EME at the existing interconnections between the facilities of Applicant and the facilities of

(1) Columbia Gas Transmission Corporation at Clinton County, Pennsylvania and Terrebonne Parish, Louisiana;

(2) Tennessee Gas Pipeline Company at Crowley, Acadia Parish, Louisiana;

(3) The Texaco Inc. gathering line in Clinton County, Pennsylvania;

(4) Delhi Gas Pipeline Corporation in Victoria County, Texas; and

(5) Sun Exploration and Production Company in Starr and Jim Wells Counties, Texas.

Applicant states that it would receive the gas purchased from TEMCO at the points of interconnection between the facilities of Applicant and the facilities of the TEMCO producer sellers.

Applicant further states that it would redeliver equivalent quantities, less compressor fuel and line loss make-up, to Lynchburg at the existing points of interconnection between the facilities of Applicant and Lynchburg in Virginia.

Applicant states that for this transportation service, it would retain a percentage of the gas quantities it receives for compressor fuel and line loss make-up and would charge Lynchburg a transportation rate based on Applicant's currently applicable Rate Schedule T–I rate and as such rate may be legally amended or superseded from time-to-time.[1] Applicant further states that Lynchburg would reimburse Applicant for any fees which Applicant pays to the Commission in connection with the proposed transportation. The transportation agreement would remain in effect for a primary term of ten years from the date of initial deliveries and year-to-year thereafter unless and until

[1] Applicant's current Rate Schedule T–1 rate is 10 cents per dt within and 8 cents per dt in excess of Lynchburg's firm sales level for transportation from the Clinton County, Pennsylvania, receipt points and 30 cents per dt within and 26.7 cents dt in excess of Lynchburg's firm sales level for transportation from the receipt points in Texas and Louisiana. Applicant's Rate Schedule T–1 currently provides for 0.9 percent of the gas transported from the Clinton County receipt points and 5.8 percent of the gas transported from the Texas and Louisiana receipt points to be retained for compressor fuel and line loss make-up.

terminated by either party's giving proper notice.

Applicant further states that Lynchburg is considering alternatives in its source of supply of natural gas. Such alternatives could involve different suppliers and/or changes in receipt points, but would not involve any increase in peak day volumes to be transported by Applicant. Applicant also requests "flexible authority" whereby it would undertake certain filing requirements to advise the Commission in the event Lynchburg obtains different sources of supply or if additions or deletions of receipt points are required in furtherance of the transportation authority requested. Applicant states that upon implementation of "flexible authority", it would file by May 1 of each year appropriate tariff sheet revisions with the Commission reflecting sources of gas and/or receipt points added during the preceding calendar year.

Applicant further requests authority to operate a dual 4-inch measuring and regulating station, tap and appurtenant facilities at milepost 1466.39 on Applicant's pipeline system in Appomattox County, Virginia, as one of the points of delivery to Lynchburg for the proposed transportation service.[2] Applicant states that such facilities were constructed and installed pursuant to Subpart B of Part 284 of the Commission's Regulations as part of a transportation service rendered by Applicant for Lynchburg and reported to the Commission in Docket No. ST86–776–000. Applicant states that it would continue to operate such facilities solely for the purpose of providing such transportation service pursuant to Subpart B of Part 284 until the Commission grants the requested certificate.

Applicant states that by filing this application it is not electing "non-discriminatory access" as such term is described and defined in §§284.8(b) and 284.9(b) of the Commission's Regulations, promulgated in Order No. 436, Docket No. RM85–1–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessary. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–11078 Filed 5–22–86; 8:45 am]

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[2] Lynchburg has advised Applicant that it may also wish to utilize such facilities in the future to receive gas which it may purchase from Applicant for transport under Applicant's Rate Schedule MDQ if such rate schedule is ultimately approved by the Commission as part of Applicant's settlement filed on March 28, 1986, in Docket Nos. TA85–1–29–000, TA85–3–29–000, TA86–1–29–000, RP83–137–000 and CP85–190–000.

[Docket No. FA83–18–001]

Transcontinental Gas Pipe Line Corp; Order Establishing Hearing Procedures

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, charles A. Trabandt and C. M. Naeve.

Issued: May 6, 1986.

Under the Natural Gas Act,[1] every natural gas company must file such annual and other periodic or special reports as the Commission prescribes as necessary or appropriate to assist in the proper administration of the Act.

Commission staff (staff) recently performed an audit of Transcontinental Gas Pipe Line Corporation (Transco). In a letter order issued February 5, 1986,[2] the Commission noted that Transco had not agreed to adopt the staff's recommendations relating to the company's accounting, reporting and tariff (purchased gas adjustment clause) billing practices. Staff's position, as stated in the letter order, is that Transco failed to record the proper amount of deferred state income taxes in its accounts and reports to the Commission, and did not use the proper amount of deferred income taxes in computing carrying charges on unrecovered purchased gas costs.

The letter order requested Transco to notify the Commission within 30 days as to whether it would consent to disposition of the accounting and tariff matters in accordance with the shortened procedure set forth in Part 158 of the Commission's regulations.[3] Under the shortened procedure, the Commission would rule on the matter solely on pleadings submitted by interested parties and staff. By letter dated March 7, 1986, Transco notified the Commission that it did not consent to the use of the shortened procedure. Consequently, we now set these matters for hearing.

Any interested person seeking to participate in this docket shall file a motion to intervene under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

The Commission Orders

(A) Pursuant to the Natural Gas Act, particularly sections 8 and 10 thereof, the Commission's Rules of Practice and Procedure, and the regulations under the Natural Gas Act, a public hearing shall be held concerning the appropriateness of Transco's accounting reporting and tariff billing practices as discussed above.

(B) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on motions as provided in the Commission's regulations.

[1] 15 U.S.C. 7171 (1976).

[2] 34 FERC ¶61,188 (1986).

[3] 18 C.F.R. 158.2, *et seq.* (1985).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11675 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-87-001]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff Tariff

May 21, 1986.

Take notice that on May 12, 1986, Mississippi River Transmission Corporation ("Mississippi") submitted for filing the tariff sheets listed below to its FERC Gas Tariff, Original Volume No. 2:

Tariff sheets	Proposed effective date
Original Sheet Nos. 222 through 236.....	April 12, 1986.

Mississippi states that the purpose of the filing is to effectuate tariff sheets regarding the tranportation on an interruptible basis of up to 10,000 Mcf of natural gas per day for Texas Gas Transmission Corporation (Texas Gas) as authorized by Commission order dated March 20, 1986. Mississippi has requested waiver of the notice requirements in order to allow the filed tariff sheets to become effective on the date proposed.

Copies of the filing have been served upon Mississippi's jurisdictional customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11701 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-76-000]

Texas Eastern Transmission Corp.; Request for Authorization of the Limited Waiver of Certain Tariff Provisions

May 21, 1986.

On May 9, 1986, Texas Eastern Transmission Corporation (Texas Eastern) filed a request for authorization of the limited waiver of its gas storage Rate Schedules ISS-3 and SS-3. Rate Schedule SS-3 is a new rate schedule which enlarges and extends the limited term storage rendered by Texas Eastern under Rate Schedule ISS-3, which expired April 15, 1986. Texas Eastern provides storage service for its local gas distributor customers under these rate schedules. The storage services Texas Eastern renders to its local gas distributor customers are subject to storage service rendered by Consolidated Gas Transmission Corp. (Consolidated) to Texas Eastern. Consolidated's storage agreement with Texas Eastern authorizes Consolidated to charge Texas Eastern a roll-over charge for injections and withdrawals of gas remaining in storage on expiration of Texas Eastern's Limited Term Storage Service Agreement. Texas Eastern's ISS-3 customers have until June 15, 1986 to withdraw any gas balance remaining in storage as of April 15, 1986, and must pay a withdrawal charge for that service. Rate Schedule SS-3 customers must pay an injection charge for injections under Rate Schedule SS-3.

Texas Eastern asks the Commission to waive such provisions of Rate Schedules ISS-3 and SS-3 as may be necessary to: (1) Permit six local gas distributor customers [1] to roll-over to Rate Schedule SS-3 the quantities of gas in storage for their account under Rate Schedule ISS-3 as of June 15, 1986; and (2) to flow through and collect from such electing customers on a prorated basis, the amount Consolidated charges Texas Eastern for such roll-over under the Storage Service Agreement between Eastern and Consolidated in lieu of Texas Eastern's charging injection and withdrawal charges under Rate Schedules ISS-3 and SS-3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11703 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Algonquin Gas Transmission Co., Central Hudson Gas & Electric Corp., Long Island Lighting Co., N.J. Natural Gas Co., Philadelphia Gas Works, and Public Service Electric & Gas Co.

[Docket No. GP86-27-000]

Texas Railroad Commission, NGPA Section 103 Determination, MR Oil Co. and University Section 30 No. 2 Well, TRC Docket No. F-08-062389, FERC No. JD 86-18383; Preliminary Finding

May 5, 1986

On March 21, 1986, the Texas Railroad Commission (TRC) submitted to the Commission a notice of determination that University Section 30 No. 2 Well (U-2 Well) operated by MR Oil Company (MR) qualifies as a new, onshore production well under section 103 of the Natural Gas Policy Act of 1978 (NGPA).[1] For a well to qualify as a new, onshore production well, the surface drilling must have begun on or after February 19, 1977. The TRC notice states that the subject well satisfies this requirement.

A review of the evidence submitted to TRC reveals that the U-2 Well was originally drilled in March, 1967, to a depth of 5,159 feet, and was plugged on March 24, 1967 as a dry hole. On August 24, 1982, MR reentered the well and made no additional drilling, but merely ran production casing to 5,174 feet,[2] tubing to 5,043 feet, and acidized and perforated from 5,093 to 5,099 feet in the same formation. MR indicated that the tangible, intangible, and acquisition costs to complete and equip this well totalled $90,377. MR stated that this cost is within the range of costs for drilling and completing a new well in the same geographic area. MR also stated that to the best of its knowledge the well did

[1] 15 U.S.C. 3313 (1982).

[2] MR stated on the recompletion form that it submitted to TRC that it had performed no additional drilling. The fifteen-foot discrepancy between the stated depth of the original drilling (5,159 feet) and the depth of MR's production casing (5,174 feet) could have been caused by any one of a number of different reasons, such as different methods of calculating depth, or using different measuring equipment.

not produce gas prior to the reentry. However, neither MR nor TRC submitted any data relative to the cost of drilling a new well in the West Texas area to a similar depth for the relevant time period.

In *L&B Oil Co. v. Federal Energy Regulatory Commission*,[3] the court concluded that a well could qualify as a "new, onshore production well" even if it was not literally spudded [4] on or after February 19, 1977. In deciding *L&B* the court considered the following factors: (1) Surface drilling commenced when L&B drilled out the surface plug on reentry; (2) L&B did not merely reactivate or deepen a previously spudded well; (3) L&B used little of the original hole before deviating to over 7,000 feet; (4) L&B incurred almost the entirety of normal exploration costs and production effort; and (5) L&B discovered and produced gas where none had previously been produced. In determining whether a reentered well qualifies under section 103, the Commission considers all the *L&B* factors to see whether on balance a particular well satisfies the test.[5]

In applying this test the Commission has held that there must be substantial new drilling for a reentered well to qualify under section 103, and has considered both the amount of the increase in depth, as well as the costs. Where there is more than a 50% increase in well depth, or if there is less than a 50% increase but the costs on reentry are comparable to the cost of drilling a new well, we have found the test satisfied.[6] In this case MR entered the subject well without deviation from, or variation in the depth of, the existing wellbore. MR made more than minimal use of the existing wellbore upon reentry. Further, although MR states that the $90,000 reentry costs are comparable to the costs of drilling a new well, there is no record evidence to support the claim, and published reports indicate that the average cost of a new 5,000-foot well drilled in that area in 1982 exceeded $250,000.[7] Thus the sole element to support TRC's finding appears to be that gas was produced from a well which had not previously produced gas. Under the circumstances presented we do not believe this factor is sufficient to justify a finding that the well is a new, onshore production well under section 103.

Accordingly, the Commission hereby makes a preliminary finding pursuant to 18 CFR 275.202(a)(1)(i) (1985) that the determination submitted by TRC is not supported by substantial evidence in the record on which the determination was made, and pursuant to 18 CFR 275.202(f) (1985) any party may, within 30 days of the issuance of this Notice, submit written comments to the Commission and request an informal conference with the Commission staff.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11676 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[3] 665 F.2d 758 (5th Cir. 1982).

[4] Spudding refers to the initial boring of the hole, to a depth of approximately 100 feet, in drilling an oil or gas well. H. Williams & C. Meyers, *Manual of Oil and Gas Terms* 564 (4th ed. 1976).

[5] Phillips Petroleum Co., 32 FERC ¶ 61,104 (1985).

[6] *Id.*

[7] The Joint Association Survey on Drilling Costs, published by the American Petroleum Institute (at 50) indicates that the average cost of drilling and equipping a gas well in 1982 in the West Texas area was $250,307 for the 3,750–4,999 foot range, and $368,140 for the 5,000–7,400 foot range. The Index of Domestic Well Costs by the Energy Information Administration (at 49) indicates an average cost of approximately $276,000 to drill a 5,000 foot well in West Texas in 1982.

[Docket No. CP81-83-010]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

May 31, 1986.

Take notice that on May 13, 1986, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Tariff sheets	Proposed effective date
First Revised Sheet Nos. 2407, 2409, 240, 2411, 2412, 2413, 2414, 2415, 2416, and 2417.	Mar. 20, 1986.

Transco states that the subject tariff sheets reflect revisions to Transco's Rate Schedule X-240, which is a transportation agreement between Transco and Southern Natural Gas Company (Southern), dated September 30, 1980, (as amended March 4, 1981 and July 12, 1985), and authorized by the Commission in a certificate issued in Docket No. CP81-83 on February 8, 1982, as amended. In the amendatory agreement date July 12, 1985, Transco and Southern agreed to revise their transportation arrangement to include two additional points of delivery for gas which Transco transports for Southern. On October 2, 1985, Transco filed a petition to amend certificate in the aforementioned proceeding to obtain authorization for the additions, and the July 12, 1985 amendatory agreement was included therein as Amended Exhibit P. On March 20, 1986, the Commission issued an order in Docket No. CP81-83-004 authorizing the additional points.

A copy of the instant filing has been served upon Southern.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practices and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before May 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-11702 Filed 5-22-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-418-000 et al.]

El Paso Natural Gas Co. et al.; Applications for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate With Pre-Granted Abandonment

May 20, 1986.

Take notice that on May 9, 1986, as supplemented on May 19, 1986, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed, on behalf of producer-suppliers currently selling gas to El Paso pursuant to certificates of public convenience and necessity, applications in Docket Nos. CI86-418-000 and CI86-424-000. In Docket No. CI86-424-000 El Paso requests the Commission issue an order under section 7(b) of the Natural Gas Act (NGA), to be effective for three (3) years from the date of issuance, authorizing blanket limited-term abandonment by El Paso's producer-suppliers of certain sales for resale of natural gas in interstate commerce. In Docket No. CI86-418-000 El Paso requests a blanket limited-term certificate of public convenience and necessity under section 7(c) of the NGA authorizing the sale for resale of natural gas in interstate commerce by those producer-suppliers with pre-granted abandonment. El Paso also requests, on behalf of those producer-suppliers, waiver of certain Commission Regulations, including those at §§ 154.94

(h) and (k), and in Parts 154 and 271 of the Commission's Regulations. El Paso Gas Marketing Co. (EPGM) requests a declaration of its status if it offers and performs limited functions in connection with El Paso's proposal, all as more fully set forth in the applications on file with the Commission and open for public inspection.

It is stated that the applications are filed as a necessary corollary to El Paso's evolution from a merchant of natural gas into a supplier/open-access transporter of natural gas. El Paso states these applications, and the authorizations requested, are essential to the proper and efficient functioning of the market served by El Paso, for without the authorizations requested, willing sellers of natural gas cannot be appropriately matched with willing buyers, and El Paso's efforts to provide open-access transportation pursuant to the Commission's Order Nos. 436, *et seq.*, will be partially frustrated.

The applications further state that the transportation volumes moving through the El Paso system displace El Paso's system sales. El Paso states that its inability to hold the market with system sales volumes reflects the competitive disadvantages suffered by El Paso as an interstate natural gas pipeline subject to the rigidities inherent in regulation (as to immediate price responsiveness, implementation of new rate structures, acceptance of new customers, realignment of facilities, and so forth), and contractual rigidities built into El Paso's long-term gas supply contracts entered into over the course of the preceding decades. El Paso states that in recognition that it could not utilize its facilities fully and efficiently in the changing market conditions unless it moved definitively in the direction of open-access transportation, El Paso opened its system on January 17, 1986, under the terms and conditions set forth in Commission Order Nos. 436, *et seq.* Thereafter, El Paso states it formulated and filed tariffs and rate schedules, at Docket No. RP86–45–000, necessary to implement open-access transportation, and these filings now await final Commission action.

El Paso's applications state further that as El Paso continues the transition from a merchant to a supplier/open-access transporter, there are specific and serious problems which must still be adequately addressed and appropriately resolved. In essence, El Paso states the decline in El Paso's sales market poses risks to El Paso (and ultimately its customers) through the build-up of potential take-or-pay liabilities which may arise under El Paso's existing long-term contracts with producer-suppliers.[1] Secondly, El Paso states the cash flow to producer-suppliers on the El Paso system has been severely impacted as El Paso's purchases have declined. El Paso states that almost two-thirds of its deliverability is shut-in on an average day. El Paso states that it is concerned, as are the producer-suppliers and the Commission, that inadequate cash flow will cause not only an impairment of present deliverability, but also inadequate development to ensure reliable and adequate long-term supplies of natural gas. El Paso states it proposes a program designed to mitigate the dual problem of take-or-pay and lowered producer-supplier revenues. The proposal herein advanced is stated to be an expansion of an experimental program open by El Paso in the last half of 1985 called the "Spot Market Release Program" (the Program).

Under the Program, El Paso states the seller of gas from non-NGA wells, that is, wells that produce gas the first sale of which is not subject to the Commission's jurisdiction under the NGA, by operation of section 601 of the Natural Gas Policy Act of 1978 (NGPA), is offered the opportunity to obtain a share of the spot market demand secured by EPGM, or to make its own marketing arrangements and sell gas surplus to El Paso's needs in the spot market. El Paso states the seller receives a price that is net of all costs of moving the gas from the wellhead to the market.

El Paso proposes to implement the Program, upon receipt of appropriate authorizations, substantially as has been done with its existing Program, except the NGA gas would be eligible for participation, and subject to the following general terms and conditions: (1) Participation in the Program by a producer-supplier shall be wholly voluntary; (2) Participation in the Program by producer-suppliers shall be on a month-to-month basis or for such longer periods as El Paso and individual producer-suppliers may agree upon, subject to El Paso's need for such gas to supply its traditional market. Participation in the Program for any period of time shall not alter the participating producer-supplier's contractual relationship with El Paso, other than as to take-or-pay credit for volumes sold into the Program; (3) The price of gas sold through the Program shall not exceed the applicable maximum lawful price prescribed by the NGPA and the Commission's implementing regulations; (4) El Paso will receive credit against its take-or-pay obligations for all gas sold by producer-suppliers through the expanded Program; (5) Participation in the Program will not be available if any facility modifications, abandonments or additions are required on the part of El Paso, or if participation would reduce the utilization of El Paso's existing facilities; (6) Gas released under the Program will be available only for purchase in El Paso's existing market area; and (7) The services of EPGM will be available to a participating producer-supplier, but utilization of those services will not be a pre-condition to participation in the Program.

It is stated that EPGM presently functions as a non-jurisdictional broker, agent, or purchaser/reseller of non-NGA gas. It is anticipated that EPGM would continue to provide the services as and when requested. With respect to the expansion of the Program to include NGA gas, EPGM will offer services as an agent to producer-suppliers to facilitate spot market sales of NGA gas. In so acting, however, EPGM will not undertake to purchase and resell gas in interstate commerce for resale. Accordingly, EPGM requests confirmation from the Commission that its contemplated activities will not make EPGM a "natural-gas company," nor subject EPGM to Commission certificate and rate regulations which apply to natural gas companies.

The applications further state that Commission approval would constitute issuance to El Paso's participating producer-suppliers of the requisite blanket abandonment and sales certificate authorizations, under section 7 of the NGA and such other authorizations, if any, as are necessary to implement the marketing of all released gas supplies which are subject to the Commission's NGA jurisdiction. El Paso states it will file with the Commission, and serve on its customers, statements identifying producer-suppliers which become eligible to participate in the expanded Program through grant of the requested authorizations. Further, El Paso states it shall file or cause to be filed with the Commission, on a quarterly basis, information as to released quantities subject to the Commission's NGA jurisdiction. El Paso states that any or all of the gas which is currently committed to El Paso under contract with participating producer-suppliers and subject to NGA jurisdiction would be covered by the abandonment and sales authorizations sought herein; *i.e.*,

[1] El Paso states that is potential take-or-pay exposure for 1985 could be several hundred million dollars and El Paso's sales volumes are still declining.

these applications contemplate the possible release and sale of all NGPA categories of gas, including NGPA section 104, section 106 and section 109 gas. However, El Paso states that because it has implemented a least-cost production scheduling program, only very small quantities of gas subject to the NGPA section 104 "flowing gas" and "replacement contract gas" maximum lawful prices, or to the maximum lawful price under NGPA section 106 will actually be available for release into the Program. El Paso estimates that 450 MMbtu per day of NGPA section 104 flowing and replacement contract gas and 106 gas might be available for release into the expanded release gas program during the balance of 1986.

The applications also state that El Paso requests that the Commission waive its regulations under the NGA as to the establishment and maintenance by participating producer-suppliers of rate schedules under Part 154 of the Commission's Regulations. El Paso states the blanket sales certificate issued to participating producer-suppliers by Commission approval of these applications could be conditioned so that the rates charged in the authorized sales would be limited by the applicable maximum lawful price prescribed by the NGPA, including any rate that the participating producer-suppliers have established the right to collect pursuant to Parts 273, 274 or 275 of the Commission's Regulations. In addition, El Paso states automatic collection of the appropriate monthly adjustments should be permitted, and El Paso requests that in approving these applications the Commission waive the requirement that participation producer-suppliers qualify for collection of any applicable allowances under section 110 of the NGPA. El Paso further requests that the Commission waive the requirement that the participating producer-suppliers comply with § 154.94(k) and Part 271 of the Commission's Regulations.

El Paso states that no transportation authority is sought in these applications. El Paso states transportation on El Paso's system of any gas released and sold under the authorizations sought herein would be accomplished under the terms of El Paso's Order Nos. 436 and 436–A tariff filing at Docket No. RP86–45–000, providing such tariff is approved by the Commission as proposed through El Paso's pending offer of settlement in that docket.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not seve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso or EPGM to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–11833 Filed 5–22–86; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3019–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed May 12, 1986 Through May 16, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860187, Final, BLM, NV, CA, Mead/McCollough-Victorville/Adelanto 500kV Transmission Line, Design, Construction, Operation and Maintenance, Clark County, NV and San Bernardino County, CA, Due: June 23, 1986, Contact: William Collins (714) 351–6373.

EIS No. 860188, DSuppl, FHW, RI, RI–138 Improvement, Jamestown Bridge Replacement to Newport Bridge Toll Plaza, Safety and Traffic Improvement Alternatives, Newport County, Due: July 11, 1986, Contact: Robert Dyer (401) 528–4544.

EIS No. 860189, Draft, FHW, MD, MD–100 Construction, I–95 to MD–3/I–97, Howard and Anne Arundel Counties, Due: July 7, 1986, Contact: Edward Terry (301) 962–4010.

EIS No. 860190, Draft, ASC, PRO, United States Acreage Adjustment Programs for Agricultural Commodities, Reducing Production of Surplus Crops, Due: July 21, 1986, Contact: Phillip Yasnowsky (202) 447–7787.

EIS No. 860191, Draft, DOE, WA, Hanford Site, Plutonium and Uranium Extraction (PUREX) Plant, Process Facility Modifications, Construction and Operation, Due: July 7, 1986, Contact: Steven Leroy (509) 376–7378.

EIS No. 860192, Final, AFS, MT, Deerlodge National Forest, Individual Lodgepole Pine Trees Protection from Mountain Pine Beetle Attacks, Jefferson County, Due: July 7, 1986, Contact: Richard Smith (406) 287–3223.

EIS No. 860193, Final, DEA, PRO, United States and Hawaii Non-Federal and Indian Lands, Cannabis Eradication Program, Due: June 23, 1986, Contact: Rodolfo Ramirez (202) 633–5628.

Dated: May 20, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–11728 Filed 5–22–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3019–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 5, 1986 through May 9, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D–AFS–J82002–MT, Rating EC2, Deerlodge Nat'l Forest, Individual Lodgepole Pine Trees Protection From Mountain Pine Beetle Attacks, MT. Summary: EPA is concerned that the effects of carbaryl on bees was not discussed. Further mitigation measures to prevent and correct accidental spills and exposures, applicator training and certification requirements, and procedures for disposing of spent pesticide containers should be described.

ERP No. D–AFS–J82004–00, Rating EC2, Intermountain Region Nat'l Forest System Lands, Noxious Weeds and Poisonous Plants Control Program, Continuation, CA, WY, ID, UT, NV, and CO. Summary: EPA thought potential human health effects were adequately addressed, but felt the draft EIS did not fully address the broader environmental risks. EPA also questioned the use of amitrole, due to its higher potential for adverse human impacts, emphasizing that it is a restricted use pesticide.

ERP No. D–AFS–K65073–AZ, Rating EC2, Apache-Sitgreaves Nat'l Forests, Land and Resource Mgmt. Plan, AZ. Summary: EPA expressed concerns about potential impacts to water quality and riparian habitat, especially from grazing activities.

ERP No. D–AFS–K65099–CA, Rating EC1, Plumas Nat'l Forest, Land and Resource Mgmt. Plan, CA. Summary: EPA expressed concerns that forest management activities could interfere with water quality restoration and protection. EPA indicated that water quality protection/restoration should be a priority item, since 30% of the water draining the forest does not meet State water quality standards.

ERP No. DS–AFS–L65096–AK, Rating EC2, 1986–90 Alaska Pulp Long-Term Sale Area, Operating Plan, Designation, Tongass Nat'l Forest, AK. Summary: EPA's primary concerns continue to be with the sale's impact on water quality. Since the environmental consequences section remains unchanged from the draft EIS, EPA has no additional comments.

ERP No. D–AFS–L65101–OR, Rating EC2, Deschutes Nat'l Forest, Land and Resource Mgmt. Plan, OR. Summary: EPA is concerned that the Forest Plan be consistent with the adopted Statewide Water Quality Management Plan for Forest Practices required by the Clean Water Act. The water quality management discussions in both the DEIS and Plan are insufficient to evaluate potential impacts. There are no specific information or data summaries to support the general statements about riparian areas and water quality. In addition, the final EIS and Plan should include the policy and program directions for the monitoring plan and how the monitoring will be used to make forest management decisions.

ERP No. D–BLM–J70006–CO, Rating EO2, Little Snake Resource Area, Resource Mgmt. Plan, CO. Summary: The EPA review was primarily concerned with protection and improvement where needed of water, air, and wetland-riparian related values. EPA identified several commendable resource management initiatives. EPA recommended several corrective actions, such as: better description of consistency with water quality standards; more definitive objectives for wetland identification and wetland-riparian area restoration and improvements; further development of mineral activity guidance and impact assessment; stronger correlation of grazing direction to protection of rangeland resource values; and inclusion of a more specific comprehensive resource monitoring strategy. EPA requested follow-up consultation.

ERP No. D–FHW–J40113–MT, Rating EC1, Bozeman Arterials Development, N. 19th Avenue Construction, Durston Rd. to Oak St.; Oak Street Construction, N. 19th Ave. to N. 7th Ave.; and Kagy Blvd. Construction, S. 3rd Ave. to S. 19th Ave., 404 Permit, MT. Summary: EPA requested that the final EIS include a commitment to construct stormwater detention facilities. EPA also indicated that further comments regarding wetlands may be appropriate after an upcoming wetland coordination meeting.

ERP No. DS–FHW–K40031–CA, Rating EC2, CA–15 Reconstruction, I–805 to I–8, New Preferred Alternative, CA. Summary: EPA expressed concerns about the potential violation of the National Ambient Air Quality Standard for carbon monoxide. EPA requested alternatives and/or mitigation that would avoid creating a violation be developed and be included in the final EIS.

ERP No. D–FHW–K40153–CA, Rating EC2, I–5/Santa Ana Freeway Widening and Interchange Reconstruction, I–405 to CA–55, 404 Permit, CA. Summary: EPA expressed concerns about the potential for increased sedimentation in Newport Bay and the need for additional air quality analysis and mitigation.

ERP No. DC–IBR–J61127–ND, Rating EU2, Garrison Diversion Unit, New Irrigation Areas and New Project Features, Operation and Maintenance, Pick-Sloan Missouri Basin Program, James R., ND. Summary: EPA's review of the proposed project as recommended by the Congressional Commission in 1984 and evaluated in this supplemental EIS identified major environmental improvements over the previous plan, however, EPA has two significant environmental concerns with the proposed action: (1) The proposed wetland replacement plan fails to meet EPA's interpretation of the requirements of the 404(b)(1) Guidelines for replacement based upon acre-for-acre compensation; (2) Salinity standards are predicted to be exceeded for the full project size of 113,000 irrigated acres at the 90th percentile and maximum probable salinity conditions for the James River in South Dakota. Violation of the State of South Dakota's antidegradation policy for the mean and median water quality conditions are also predicted and reported in the draft supplemental EIS. EPA also identified additional information needs including the need to analyze selenium mobility from the newly irrigated soils, review the alternative Municipal and Industrial water supply options recommended by the Commission, address the options for Indian Land water development as recommended by the Commission, and to specify the Best Management Practices as required by State legislation and as offered in the 1979 and 1983 EIS's. Due to these concerns EPA found the project to be environmentally satisfactory. EPA did note, however, that should the proposed Reformulation Bill become law for the Garrison Diversion Unit, most of these deficiencies in the mitigation aspects of the irrigation project would be corrected. EPA would review the subsequent revised draft EIS and determine if the rating of environmentally unsatisfactory should be withdrawn.

ERP No. D–MMS–A02116–00, Rating EC2, January 1987–December 1991 OCS Oil and Gas Lease Sales, 5 Year Program, Offshore the Atlantic, Pacific, Gulf of Mexico, and Alaska Regions, US. Summary: EPA recommended that the subarea deferrals proposed for Alternatives I and II be deferred from the Final Program, and endorsed Alternative VI, which would defer oil and gas lease sales from six planning areas altogether. EPA also recommended against holding a sale in the Straits of Florida. EPA believes that the draft EIS for the program should be revised to remove inconsistencies in analyses among OCS regions.

Final EISs

ERP No. F–BLM–L61151–ID, Shoshone and Sun Valley Wilderness Study Area, Wilderness Designation, ID. Summary: EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

ERP No. FB–COE–H36029–NB, Papillion Creek and Tributaries Lakes, Flood Control Plan and Recreational Improvements, Papillion Creek Basin, NB. Summary: EPA has no objections to the selected plan. Previously expressed concerns regarding proposed reservoir alternatives have been adequately addressed by selection of a channel improvement alternative as the recommended plan.

ERP No. FS-COE-K85029-HI, West Beach Resort Development, Construction of Marina and Beach Lagoons, Permit, Oahu Island, HI. Summary: EPA noted that its prior concerns on ground water impacts and project alternatives were adequately addressed, but expressed continuing concerns about adverse impacts to water quality and marine ecosystems.

Dated: May 20, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-11729 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30268; FRL-3013-9]

Applications To Register Pesticide Products; Certain Companies; Pennwalt Corp. et al.

Correction

In FR Doc. 86-10444, beginning on page 17669, in the issue of Wednesday, May 14, 1986, make the following correction:

In the "Dates" caption, "May 29, 1986" should read "June 13, 1986".

BILLING CODE 1505-01-M

[OPTS-59215A; FRL-3018-8]

Certain Chemical Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-32. The test marketing conditions are described below:

EFFECTIVE DATE: May 9, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Payer, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, RM. E-613, 401 M Street, SW., Washington, DC 20460, (202-382-3380).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TMS-86-32. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-86-32. A bill of lading accompanying each shipment must state that the use of the substance is restricted to those approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

T-86-32

Date of Receipt: March 19, 1986.

Notice of Receipt: March 28, 1986 (51 FR 10668).

Applicant: Confidential.

Chemical: (G) Cationic aliphatic condensate.

Use: (G) Paper additive.

Production Volume: 18,000 pounds.

Number of Customers: One.

Worker Exposure: Import: None. Processing and use: dermal, a total of 8 workers up to 90 days/yr.

Test Marketing Period: 90 days. *Commencing on* May 9, 1986.

Risk assessment: EPA identified no significant concerns for human health effects. Therefore, the test market substance will not pose any unreasonable risk of injury to health. The Agency did identify potential adverse effects to aquatic organisms. However, since wastes from processing will be recycled, the test market substance will not pose any unreasonable risk of injury to the environment.

Public Comments: None.

The agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 9, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-11298 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59766; FRL-3020-3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any perosn who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federl Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86-145 and 86-146—June 1, 1986.

Y 86-147 and 86-148—June 4, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential

version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-145

Importer. Confidential.

Chemical. (G) Isoyanate polymer with polyalkyloxy compound, substituted propanoic acid, and a diamine.

Use/Import. (S) Industrial color fixing agent for leather. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Use: Dermal and ocular, a total of 1 worker.

Environmental Release/Disposal. Release during clean-up operations. Disposal by publicly owned treatment works (POTW) and on-site biological treatment.

Y 86-146

Manufacturer. Confidential.

Chemical. (G) Water reducible air-dry alkyd resin.

Use/Production. (S) Industrial warter reducible binder for air-dry finishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-147

Manufacturer. E.I. duPont de Nemours and Company, Inc.

Chemical. (G) Ethylene interpolymer.

Use/Production. (G) Fast cure polymer. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86-148

Manufacturer. Confidential.

Chemical. (G) Polymer from poly(alkylene ether)glycol and methylene bis-cyclohexyl isocyanate.

Use/Production. (G) Coating or film. Prod., range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: May 16, 1986.

Denise Devoe,

Acting Director, Information and Mangement Division.

[FR Doc. 86-11662 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51624; FRL-3020-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-nine PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-1014 and 86-1015—August 6, 1986.

P 86-1016, 86-1017, 86-1018, 86-1019, 86-1020, 86-1021, 86-1022, 86-1023, 86-1024 and 86-1025—August 9, 1986;

P 86-1026, 86-1027, 86-1028, 86-1029, 86-1030, 86-1031, 86-1032 and 86-1033—August 10, 1986;

P 86-1034, 86-1035 and 86-1036—August 11, 1986;

P 86-1037, 86-1038, 86-1039, 86-1040, 86-1041 and 86-1042—August 12, 1986;

Written comments by:

P 86-1014 and 86-1015—July 7, 1986;

P 86-1016, 86-1017, 86-1018, 86-1019, 86-1020, 86-1021, 86-1022, 86-1023, 86-1024 and 86-1025—July 10, 1986;

P 86-1026, 86-1027, 86-1028, 86-1029, 86-1030, 86-1031, 86-1032 and 86-1033—July 11, 1986;

P 86-1034, 86-1035 and 86-1036—July 12, 1986;

P 86-1037, 86-1038, 86-1039, 86-1040, 86-1041 and 86-1042—July 13, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51624]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1014

Importer. American Cyanamid Company.

Chemical. (G) Substituted phosphine oxide.

Use/Import. (G) Chemical extractant. Import range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; acute dermal: >2 g/kg; Irritation: Skin—Severe, Eye—Mild; Ames test: Nonmutagenic.

Exposure. Processing: A total of 10 workers, up to 4 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. Minimal.

P 86-1015

Importer. American Cyanamid Company.

Chemical. (G) Substituted phosphine oxide.

Use/Import. (G) Chemical extractant. Import range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Severe, Eye—Mild; Ames test: Nonmutagenic.

Exposure. Processing: A total of 10 workers, up to 4 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. Minimal.

P 86-1016

Importer. Marubeni America Corporation.

Chemical. (S) N,N-Dimethylaminopropylacrylamide.

Use/Import. (G) Coating resin for open, non-dipersive use. Import range: 10,000-100,000 kg/yr.

Toxicity Data. Acute oral: 3.9 g/kg; Acute dermal >2.0 g/kg; Irritation: Skin—Severe, Eye—Severe; Ames test: Nonmutagenic; Inhalation: 5.9 mg/ml.

Exposure. Processing: A total of 26 workers, up to 8 hrs/da.

Environmental Release/Disposal. Minimal release to water. Disposal by standard waste disposal means.

P 86-1017

Importer. Confidential.

Chemical. (G) Isocyanate polymer with polyalkyloxy compound, substituted propanic acid, and a diamine.

Use/Import. (S) Industrial color fixing agent for leather. Import range: Confidential.

Toxicity Data. No data submitted.
Exposure. Processing: Dermal, a total of 1 worker, up to 15 min/da.
Environmental Release/Disposal. Release to water. Disposal by publicly owned treatments works (POTW) and biological treatment system.

P 86–1018

Importer. Nuodex Inc.
Chemical. (G) Unsaturated polyester resin from dibasic acids and polyols.
Use/Import. (S) Industrial coatings and adhesives. Import range: 30,000–150,000 kg/yr.
Toxicity Data. Acute oral: >10,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–1019

Manufacturer. Confidential.
Chemical. (G) Cyclotetra(2-hydroxy-5-tert-butylbenzene).
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: A total of 10 workers.
Environmental Release/Disposal. 0.05 to 0.15 kg/batch released to land. Sent to a disposal facility.

P 86–1020

Manufacturer. Confidential.
Chemical. (G) Hydroxymethyl tetramer of substituted phenol.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: A total of 10 workers.
Environmental Release/Disposal. 0.05 to 0.15 kg/batch released to land. Sent to a disposal facility.

P 86–1021

Manufacturer. Confidential.
Chemical. (G) Transition metal trichalcogenide.
Use/Production. (G) Sealed energy source component. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 gm/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative.
Exposure. Manufacture: A total of 4 workers, up to 280 da/yr.
Environmental Release/Disposal. Minimal.

P 86–1022

Manufacturer. Confidential.
Chemical. (S) Polymer of acetoacetate of hydroxy ethyl methacrylate, methyl methacrylate, styrene, butyl methacrylate.
Use/Production. (G) Polymer for industrial finishing. Prod. range: 9,000–45,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal and inhalation, a total of 4 workers, up to 3 hrs/da, up to 7 da/yr.
Environmental Release/Disposal. Release to air, sewer and land. Disposal by POTW and venting with 20 kg/batch incinerated.

P 86–1023

Manufacturer. Confidential.
Chemical. (S) Polymer of dipropylene glycol, diethylene glycol, ethylene glycol, trimethylol propane, phthalic anhydride, terephthalic acid, tall oil fatty acid.
Use/Production. (S) Industrial polymer for industrial metal coatings. Prod. range: 90,000–180,000 kg/yr.
Toxicity Data. Confidential.
Exposure. Manufacture: Dermal and inhalation, a total of 4 workers, up to 3 hrs/da, up to 4 da/yr.
Environmental Release/Disposal. Release to air, sewer and land. Disposal by POTW and venting with 20 kg/batch incinerated.

P 86–1024

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Acrylic polyelectrolyte.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 11 workers.
Environmental Release/Disposal. No release. Disposal by public incineration.

P 86–1025

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Acrylic polyelectrolyte.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 11 workers.
Environmental Release/Disposal. No release. Disposal by public incineration.

P 86–1026

Manufacturer. Confidential.
Chemical. (G) Alkyl esters.
Use/Production. (G) Intermediate, surfactant and textile processing aid. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by POTW.

P 86–1027

Manufacturer. Confidential.
Chemical. (G) Alkyl esters.
Use/Production. (G) Intermediate, surfactant and textile processing aid. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by POTW.

P 86–1028

Manufacturer. Amoco Corporation.
Chemical. (S) 2, 6-dimethyl naphthalene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >13,430 mg/kg; Acute dermal: >3,000 mg/kg; Skin—Non-irritant, Eye—Mild.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

P 86–1029

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Aromatic terpene phenol resin.
Use/Production. (S) Industrial tackifiers for adhesives. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 0.25 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 1 to 3 kg/batch to air and water. Disposal by waste water treatment, mechanical filter system and settling pond.

P 86–1030

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Aromatic hydrocarbons, phenol polymer.
Use/Production. (S) Industrial tackifiers for adhesives. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 4 workers, up to 0.25 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 3 kg/batch released to air. Disposal by mechanical filter system and settling pond.

P86–1031

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Hydroxyl containing acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 4 workers.

Environmental Release/Disposal. Disposal by incineration.

P 86–1032

Manufacturer. Rohm and Haas Company.

Chemical. (G) Functionalized acrylic-vinyl aromatic copolymer.

Use/Production. (G) Polymeric processing aids in a contained use. Prod range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by POTW.

P 86–1033

Manufacturer. Rohm and Haas Company.

Chemical. (G) Modified acrylic-vinyl aromatic copolymer.

Use/Production. (G) Polymeric processing aids for destructive and non-destructive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by POTW and biological treatment system.

P 86–1034

Manufacturer. Confidential.

Chemical. (G) Moleated, phenolic rosin ester, calcium salt.

Use/Production. (G) Resin vehicle for printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–1035

Manufacturer. Confidential.

Chemical. (G) Polymer of aromatic diisocyanate, aliphatic diacid and alkanediols.

Use/Production. (S) Site-limited used for production of urethane elastomers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal, a total of 12 workers.

Environmental Release/Disposal. 0.4 to 1.0 kg/day released to land. Disposal by foaming a solid PUR product.

P 86–1036

Manufacturer. Confidential.

Chemical. (G) Cyanoacrylate ester polymer.

Use/Production. (G) Intermediate for adhesive. Prod. Range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–1037

Manufacturer. Confidential.

Chemical. (G) Polyfunctional methacrylate of polyisocyanate adduct of alkoxylated polyol.

Use/Production. (S) Graphic arts printing plate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–1038

Manufacturer. Confidential.

Chemical. (G) Oxime blocked polyether urethane.

Use/Production. (G) Industrial polymer used in coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 44 workers, up to 8 hrs/da, up to 260 da/yr.

Environmental Release/Disposal. 2 to 200 kg/batch released to land. Disposal by incineration, approved landfill and commercial disposer.

P 86–1039

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Open use for industrial paint product. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 53 workers, up to 8 hrs/da, up to 232 da/yr.

Environmental Release/Disposal. 5 to 182 kg/batch released to land. Disposal by incineration, approved landfill and commercial disposer.

P 86–1040

Manufacturer. Confidential.

Chemical. (G) Vinyl toluene alkyd.

Use/Production. (S) Industrial coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 5 workers.

Environmental Release/Disposal. Confidential.

P 86–1041

Manufacturer. Quantum Composites, Inc.

Chemical. (G) Amine salt.

Use/Production. (G) Accelerator for cross linking resin systems. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

P 86–1042

Manufacturer. Mona Industries, Inc.

Chemical. (S) Mixed mono- and di-phosphate esters of 1H-imidazole propanoic acid, 4,5-dihydro-1-(2-hydroxyethyl)-,2-undecyl mixed di- and tri-potassium salt.

Use/Production. (S) Exempt use (cosmetics), textile fiber producer finish, surfactant in fabrics and surface cleaners for industrial, commercial and consumer use. Prod. range: 8,750–39–375 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 3 workers, up to 2 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 0.2 to 2 kg/batch released to water. Disposal by POTW.

Dated: May 16, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–11663 Filed 5–22–86; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3020–9]

Management Advisory Group Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the Management Advisory Group to the EPA Construction Grants Program (MAG) will be held on June 10–11, 1986, at Falmouth and the Woods Hole Oceanographic Institution in Massachusetts.

The meeting will take place at the Sheraton Hotel in Falmouth on June 10 from 9 a.m. to 5 p.m., and from 8 a.m. to 1 p.m. on June 11. The meeting will be continued at the Woods Hole Oceanographic Institution, at Woods Hole from 2 p.m. to 4:30 p.m. on June 11.

The agenda will include meetings of the MAG Task Forces on Sludge Management, Infiltration/Inflow, and the Clean Water Act Reauthorization. There will be presentations and discussion on sewage treatment in reference to the Buzzards Bay estuary and the sole source aquifer in Cope Cod. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any member of the public wishing to make comments is invited to submit them in writing to the Executive Secretary at the meeting.

The meeting will be open to the public. For additional information, please contact Georgette Brown at (202) 382–5859.

Dated: May 16, 1986.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 86-11665 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59222; FRL-3020-4]

Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of five applications for exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by June 9, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59222]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-43

Close of Review Period. June 26, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted dialkylamino alkylazo carbonate.
Use Production. (S) Dyeing agent for use in liquid crystal displays. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-44

Close of Review Period. June 26, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted alkylazo benzoate.
Use Production. (S) Dyeing agent for use in liquid crystal displays. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-45

Close of Review Period. June 26, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted alkylphenyl alkyl tetrahydro alkylazo benzoate.
Use Production. (S) Dyeing agent for use in liquid crystal displays. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-46

Close of Review Period. June 29, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted benzenesulfonamide.
Use/Production. (G) A component of a vehicle used in printing ink. Prod. range: 1,360 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing. Minimal.
Environmental Release/Disposal. Disposal by publicly owned treatment works (POTW).

T 86-47

Close of Review Period. June 29, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted benzenesulfonyl chloride.
Use/Production. (G) Site-limited intermediate. Prod. range: 1,750 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Minimal
Environmental Release/Disposal. Disposal by POTW.

Dated: May 16, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-11661 Filed 5-22-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Agency Information Collection Activities Under OMB Review; Thrift Industry Report

Dated: May 19, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a revised information collection request, "Thrift Industry Report", formerly designated as "Periodic Reports of Saving & Loan, Sections A,B,C,D,E,F,G,H,I and K", to the Office of Management and Budget for expedited approval in accordance with the Paperwork Reduction Act (44 U.S.C Chapter 35).

COMMENTS: Comments on the information collection request we welcome and should be submitted within 15 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Parker Jayne, Office of Examinations and Supervision, (202) 377-6486, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

Jeff Sconyers,

Secretary.

[FR Doc. 85-11610 Filed 5-22-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Bank of New England Corp., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.15) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received no later than June 13, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation,* Boston Massachusetts; to acquire 100 percent of the voting shares of Consumer Savings Bank, Worcester, Massachusetts. Comments on this application must be received not later than June 16, 1986.

2. *United Vermont Bancorporation,* Rutland, Vermont; to acquire 66.9 percent of the voting shares of The Green Mountain Bank, Winhall Township, Vermont.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens and Southern Georgia Corporation,* Atlanta, Georgia, and Citizens and Southern Florida Corporation, Fort Lauderdale, Florida; to acquire 100 percent of the voting shares of Landmark Bank of Seminole County, Casselberry, Florida, a *de novo* bank.

2. *Genala Banc, Inc.,* Geneva, Alabama; to become a bank holding company by aquiring 80 percent of the voting shares of The Citizens Bank, Geneva, Alabama.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizen Fidelity Corporation,* Louisville, Kentucky; to acquire 100 percent of the voting shares of First Midwest Bancorp, New Albany, Indiana, and thereby indirectly acquire First Midwest Bank and Trust, New Albany, Indiana.

Board of Governors of the Federal Reserve System, May 19, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 11612 Filed 5-22-86; 8:45 am]

BILLING CODE 6210-01-M

BankEast Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BankEast Corporation,* Manchester, New Hampshire; to engage *de novo* through its subsidiary BankEast Leasing Corp., Manchester, New Hampshire, in leasing personal or real property or acting as agent, broker, or advisor in leasing such property pursuant to section 225.25(b)(5) of the Board's Regulation Y.

2. *BayBanks, Inc.,* Boston, Massachusetts; to engage *de novo* through its subsidiary BayBanks Credit Corporation, Dedham, Massachusetts, in processing and servicing consumer loans pursuant to section 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennyslvania 19105:

1. *Meridian Bancorp,* Reading, Pennsylvania; to engage directly in the making, acquiring, servicing and soliciting of loans.

Board of Governors of the Federal Reserve System, May 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-11613 Filed 5-22-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Service (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 16, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

Centers for Disease Control

Subject: Birth Defects and/or Genetic Disease Surveillance—Extension—(0920–0010)
Respondents: Individuals or households
Subject: Reproductive Study of Women Who Work With Video Display Terminals—New
Respondents: Individuals or households

Office of the Assistant Secretary for Health

Subject: National Hospital Discharge Survey—Extension—(0937–0004)
Respondents: State and local governments, businesses, nonprofit institutions and small businesses
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–8650 for copies of packages)
Subject: Disclosure of Ownership and Financial Interest Statement—HCFA–1513—Revision—(0938–0086)
Respondents: Providers
Subject: Request for Certification as a Supplier of Portable X-ray Services and the Portable X-ray Survey Report Form—HCFA 1880 and 1882—Extension—(0938–0027)
Respondents: Suppliers of portable X-ray services
Subject: Histocompatibility Testing Laboratories Survey Report Form—HCFA 445—Extension—(0938–0376)
Respondents: States
Subject: Home Health Agency—Home Health Visit Questions—HCFA–R–7—Existing Collection—
Respondents: Individuals
Subject: Corrective Action Plan (Medicaid Eligibility Quality Control)—HCFA–320—Extension—(0938–0144)
Respondents: States
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)
Subject: Report to U.S. Social Security Administration by Person Receiving Benefits for Child or Adult Unable to Handle Funds, SSA–7161, and Reports to U.S. Social Security Administration, SSA—7162—Extension—(0960–0049)
Respondents: Individuals
Subject: Reconsideration Report for Disability Cessation, SSA–782—Extension—(0960–0350)
Respondents: Individuals
Subject: Cessation or Continuance of Disability or Blindness Determination and Transmittal, SSA–832—Existing Collection—
Respondents: State and local governments
Subject: Representation Payee Evaluation Report, SSA–624—Extension—(0960–0069)
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503
Attn: (name of OMB Desk Officer).

Dated: May 20, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–11711 Filed 5–22–86; 8:45am]

BILLING CODE 4150–04–M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Atlanta District Office, chaired by John H. Turner, District Director. The topics to be discussed are Health Claims on Food Labels and Switching of Prescription Drugs to Over-the-Counter Drugs.

DATE: Tuesday, June 3, 1986, 9 a.m. to 12 noon

ADDRESS: Margaret Cameron Spain Auditorium, 19th and 7th Ave. South, Birmingham, AL 35020.

FOR FURTHER INFORMATION CONTACT: Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–7355.

Atlanta District Office, chaired by John H. Turner, District Director. The topics to be discussed are Health Claims on Food Labels and Switching of Prescription Drugs to Over-the-Counter Drugs.

DATE: Thursday, June 5, 1986, 9 a.m. to 12 noon

ADDRESS: Conference Rm., Charles Stone Agricultural Center, 819 Cook Ave., Huntsville, AL 35801.

FOR FURTHER INFORMATION CONTACT: Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–7355.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 19, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–11607 Filed 5–22–86; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Vital and Health Statistics National Committee; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Uniform Minimum Health Data Sets established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, June 4, 1986 from 9:00 a.m. to 4:30 p.m. in Room 423A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will continue to examine the merits of recommending the inclusion or exclusion of individual items in the proposed long term care minimum data set.

Further information regarding the Subcommittee may be obtained by contacting Henry S. Mount, National Center for Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

Dated: May 14, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86–11712 Filed 5–22–86; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Facilities Improvement and Repair Priority List for Fiscal Year 1986

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of facilities improvement and repair priority list for fiscal year 1986.

This notice is published in exercise of authority delegated by the Secretary of Interior to the Assistant Secretary—Indian Affairs by 209 DM8.

The Facility Improvement and Repair list has been prepared for fiscal year 1986 in accordance with House Report Number 98–886, page 52, "To avoid some of the problems experienced in the past year, the Committee directs the Bureau to revise the FI&R priority system by publishing in the **Federal Register** by October 1 of each fiscal year, the national list of projects expected to be accomplished that year within the available funds."

This notice for FY 1986 provides the approved list of FI&R projects. Construction of these projects is subject to the availability of funds. The list is based upon the Bureau's criteria for ranking projects as published in the **Federal Register**/Vol. 51, No. 30/ Thursday, February 13, 1986/Notice 5415:

The Projects for FY 1986 are:

1. Pierre Indian Learning Center
2. Turtle Mountain L&O Facility
3. Blackfeet Dormintory
4. Carter Seminary Airconditioning
5. Sells L&O Facility
6. Owyhee L&O Facility
7. Fort Apache L&O Facility
8. Hopi/Moencopi Day School
9. Mescalero Agency Headquarters
10. Greasewood School
11. Chi-Chil-Tah Boarding School
12. Chinle Boarding School—Phase I
13. Warm Springs Headquarters
14. Bogue Chitto Boarding School
15. Conehatta School
16. Redwater Day School
17. Choctaw Headquarters

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

May 13, 1986.

[FR Doc. 86–11623 Filed 5–22–86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-6664-A]

Alaska Native Claims Selection; English Bay Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to The English Bay Corporation for approximately 1 acre. The lands involved are in the vicinity of English Bay, Alaska.

Seward Meridian, Alaska

T. 9 S., R. 16 W. (Surveyed)
Sec. 1, those lands formerly within ANCSA Sec. 3(e) application AA–50561.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the *Anchorage Times.* Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until June 23, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–11603 Filed 5–22–86; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

Endangered and Threatened Species; Receipt of Applications for Permits; California Academy of Sciences et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–704241

Applicant: California Academy of Sciences, San Francisco, CA.

The applicant requests a permit to export six Asian bonytongues (*Scleropages formosus*) to the Vancouver Public Aquarium for enhancement of propagation and survival of the species.

PRT–706975

Applicant: Native Gardens, Greenback, TN.

The applicant requests a permit to sell in interstate commerce artificially propagated Tennessee purple coneflower (*Echinacea tennesseensis*) derived from cultivated stock and plants rescued from the wild for the purpose of enhancement of propagation of the species.

PRT–707023

Applicant: Melissa Josey Gribble, Rosston, TX.

The applicant requests a permit to purchase two pairs of captive born red siskins (*Carduelis* (=*Spinus*) *cucullata*) from Pat Demko of Pittsburgh, PA, for the enhancement of propagation.

PRT–707271

Applicant: Louisiana Purchase Gardens & Zoo, Monroe, LA.

The applicant requests a permit to export one pair of captive born margays (*Felis wiedii*) to Ardastra Gardens, Nassau, Bahamas, for the purpose of enhancement of propagation.

PRT–707241

Applicant: I & K Productions, Inc. Washington, DC.

The applicant requests a permit to purchase one male and four female Asian elephants (*Elephas maximus*) from Diamond "O" Ranch, Canton, Ohio, for the purpose of enhancement of propagation.

PRT–706846

Applicant: St. Paul's Como Zoo, St. Paul, MN.

The applicant requests a permit to purchase in interstate commerce one female orangutan (*Pongo pygmaeus*) from Gladys Porter Zoo, Brownsville, TX, for the purpose of enhancement of propagation.

PRT–707003

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to purchase in interstate commerce and export to the Taipei Municipal Zoo, Taiwan a pair of ocelots (*Felis pardalis*) for the purpose of enhancement of the propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road,

Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 16, 1986.

R.T. Kravetsky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-11722 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-55-M

Endangered and Threatened Species; Receipt of Application for Permit; Donald B. Siniff

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

File no. PRT-707688

Applicant Name: Donald B. Siniff, University of Minnesota, Minneapolis, MN.

Type of Permit: Scientific Research

Name and Number of Animals: California sea otters—*Enhydra lutris nereis* 40

Summary of Activity to be Authorized: The applicant proposes to take these animals for the purpose of determining the effects of introducing animals rescued from oil spill areas into other sea otter populations. Up to 40 sea otters of various ages and both sexes will be captured, drugged and tagged. Blood and a premolar tooth will be extracted from 35, and up to 15 will be implanted with radio transmitters for the purpose of tracking after translocation.

Source of Marine Mammals for Research: Wild—off the coast of California

Period of Activity: 1 year

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: May 16, 1986.

R.T. Kravetsky,

Acting Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 86-11723 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Gates of the Arctic National Parks Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Region of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

DATE: The meeting will be held starting on Tuesday, June 17, 1986, from 9:00 A.M. to 5:00 P.M. and ending Wednesday afternoon, June 18, 1986.

Location: Sophie Station, 1717 University Avenue, Fairbanks, Alaska.

Agenda: The following agenda items will be undertaken:

1. Call meeting to order
2. Roll call
3. Introduction of visitors and guests
4. Approval of minutes
5. Agency reports
6. Committee workshops
   a. Access
   b. Eligibility
   c. Traditional use areas
7. Committee reports
8. Public/Agency testimony
9. Resolutions
10. Hunting program draft recommendations
11. New business
12. Chairperson election
13. Meeting schedule
14. Commissioner comments
15. Adjournment

Written comments and recommendations received prior to June 17, 1986, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: May 16, 1986.

Robert L. Peterson,

Acting Regional Director.

[FR Doc. 86-11733 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area, Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30(PST) on Thursday, June 5, 1986 at Tamalpais High School Student Center, Mill Valley, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Ms. Daphne Green
Mr. Burr. Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items are: review of the environmental assessment of the Eucalyptus Removal Program for GGNRA and consideration of the staff report and the Marin Committee recommendations on the Coast Guard's proposed move to East Fort Baker.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, CA 94123.

Minutes for the meeting will be available for public inspection by July 5, 1986, in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: April 29, 1986.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 86-11735 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area, Public Hearing and Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing and meeting of the Golden Gate National Recreation Area Advisory Commission will be held in two parts. The first part will be held in San Francisco at 7:30 p.m. (PST) on Thursday, May 22, 1986 at Building 201, Fort Mason, San Franscisco, California. The second part will be held in Marin County on June 5, 1986, at 7:30 p.m. (PST) at Tamalpais High School Student Center, Mill Valley, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel form members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Ms. Daphane Greene
Mr. Burr Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items for the San Francisco meeting are: consideration of the staff report and the San Francisco Committee recommendations on the design of the Phillip Burton Memorial at Fort Mason and a public hearing for consideration of the National Park Service staff report and recommendations on the proposed Child Care Center in the Presidio of San Francisco.

The meeting is open to the public. Any member of the public may file with the commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123.

Minutes for the meeting will be available for public inspection by June 22, 1986, in the office of the General Superintendent, Golden Gate National Recretion Area, Fort Mason, San Francisco, CA 94123.

Date: March 29, 1986.

W. Lowell White,

Acting Regional Director.

[FR Doc. 86-11734 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Decision and Statement of Reasons for Decisions of Red Rim Unsuitability Petition

SUMMARY: The Director of the Office of Surface Mining Reclamation and Enforcement (OSMRE) has reached a decision on a petition to designate Federal lands as unsuitable for surface coal mining operations in the Red Rim area of Wyoming.

ADDRESSES: Copies of the Statement of Decision and the Statement of Reasons for the decision may be obtained from Mark Boster, Chief, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240, or Allen D. Klein, Administrator, Western Technical Center, Office of Surface Mining Reclamation and Enforcement, Brooks Tower, Second Floor, 1020 15th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Mark Boster, Chief, Division of Permit and Environmental Analysis; Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343-1480.

SUPPLEMENTARY INFORMATION: The National Wildlife Federation and the Wyoming Wildlife Federation filed a petition with OSMRE on September 27, 1982, to designate approximately 9,000 acres of Federal lands in the Red Rim area of Wyoming as unsuitable for surface coal mining operations. The Federations also petitioned the State of Wyoming to designate approximately 9,000 acres of private lands within the Red Rim area as unsuitable for surface coal mining operations. The Federal petition was filed in accordance with section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its implementing regulations at 30 CFR Part 769. The petition alleged: (1) That reclamation of the area was not technologically and economically feasible; and (2) that Federal lands within the area were fragile lands, as defined at 30 CFR 762.5. Pursuant to 30 CFR Part 769, OSMRE analyzed the allegations of the petition, and on January 22 and 23, 1985, held a public hearing. OSMRE published the final petition evaluation document and environmental impact statement (PED/EIS) in November 1985.

A copy of the Statement of Decision signed by the Director appears as an appendix to this notice. Additional copies of the Statement of Decision and copies of the Statement of Reasons (not attached to this notice) are available at no cost from the Offices listed above under **ADDRESSES.** OSMRE has sent copies of these documents to all interested parties of record.

Additional information on the petition can be found in **Federal Register** notices of January 5, 1983 (Receipt of a Complete Petition for Designation of Lands as Unsuitable for Surface Coal Mining Operations, 48 FR 523); June 29, 1983 (Notice of Intent to Prepare Environmental Impact Statement, 48 FR 29961); October 20, 1983 (Notice of public hearing, 46 FR 48724); January 4, 1984 (notice of postponement of the public hearing, 49 FR 521); March 5, 1984 (Notice of rescheduling of public hearing, 49 FR 8092); April 4, 1984 (Notice of postponement of public hearing, 49 FR 13440); and December 19, 1984 (Notice of public hearing, 49 FR 49388).

Dated: May 19, 1986.

Ted D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

Statement of Decision

Under section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1272, the Office of Surface Mining Reclamation and Enforcement (OSMRE) was petitioned by the National Wildlife Federation and the Wyoming Wildlife Federation to designate certain Federal lands in the Red Rim area of southcentral Wyoming as unsuitable for all types of surface coal mining operations. The Federations also petitioned the State of

Wyoming with respect to certain private lands in the same area. Rocky Mountain Energy Company, the owner of private coal underlying the petition area, and Taylor Lawrence, the owner of the majority of private surface comprising the area and the lessee of the majority of the Federal grazing allotments within it, intervened in opposition to the petition.

As required by sections 522(c) and 522(d) of SMCRA, OSMRE sought public comment on the petition. With the State of Wyoming, OSMRE held a public hearing in Rawlins, Wyoming, which is located near the petition area. OSMRE also prepared a detailed petition evaluation document/environmental impact statement (PED/EIS) evaluating the petition and all reasonable decision alternatives.

In reaching my decision on the Red Rim unsuitability petition, I have considered all of the information in the Administrative Record for this proceeding, including the PED/EIS, the recommendation of the Federal land management agency, and the information provided by the petitioners, intervenors, government agencies, the State of Wyoming, industry and the public. Based upon this information, I have reached the following decision:

1. I find that, as the petitioners allege, Federal lands within the petition area are fragile lands which surface coal mining operations would affect, potentially resulting in significant damage to important natural systems. The fragile lands and important natural systems at issue in the petition include portions of the Red Rim critical winter range delineated by the Wyoming Game and Fish Department for the Baggs Herd of pronghorn. In accordance with section 522(a)(3) of SMCRA, the decision whether to designate those fragile Federal lands within the petition area as unsuitable for certain types of surface coal mining operations is subject to my discretion.

2. Exercising this discretion, I decline to designate all or any part of the Red Rim petition area as unsuitable for surface coal mining operations, but hereby require that the approval of any Federal mining plan for the petition area include a condition that restricts from development the pronghorn winter range located within the south portion of the petition area until reclamation of pronghorn winter habitat in the north portion of the petition area has been demonstrated to be successful.

3. Reclamation in the north portion of the petition area shall be demonstrated to be successful when the Department of the Interior finds in writing that the operator/lessee has (1) demonstrated its capability to restore the carrying capacity of the critical winter range, (2) met the requirements of SMCRA, the applicable regulatory program, and the Bureau of Land Management's (BLM's) land-use planning decisions for the petition area, and (3) demonstrated that postmining vegetation would provide for pronghorn forage production equal to or greater than premining conditions. The postmining vegetation (composition and diversity (structural and species-specific)) must approximate premining conditions and be self-renewing when subjected to foraging use. The north portion of the petition area consists of secs. 24, 26, and 34, T. 21 N., R. 89 W.; secs. 4, 6, 8, and 18, T. 20 N., R. 89 W.; and secs. 12, 14, 22, and 24, T. 20 N., R. 90 W. The south portion of the petition area consists of secs. 26, 28, 32, and 34, T. 20 N., R. 90 W.; secs. 4, 6, 8, 18, and 30, T. 19 N., R. 90 W.; and secs. 24 and 26, T. 19 N., R. 91 W.

4. I find that there is insufficient evidence to demonstrate that, as the petitioners allege, reclamation of surface coal mining operations in the petition area pursuant to the requirements of SMCRA is not technologically and economically feasible. I, therefore, decline to designate all or any part of the Red Rim petition area as unsuitable for either surface or underground coal mining operations based on the technological and economic feasibility criterion of section 522(a)(2) of SMCRA.

My *Statement of reasons* explains the basis for my decision not to designate the Red Rim petition area unsuitable for either surface or underground coal mining operations. This decision is final on the date signed. Any appeal from this decision must be filed within 60 days of that date in the United States District Court for the District of Wyoming, as provided in section 526(a)(1) of SMCRA. Copies of this decision will be sent by certified mail to all parties to this proceeding.

Dated: May 19, 1986.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-11617 Filed 5-22-86; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Panama, Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Republic of Panama as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in the Republic of Panama. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Republic of Panama

Project: 525-HG-012—$10,000,000.00
Attention: Dr. Eduardo Dudley, Director
Ministry of Planning and Economic Policy
Apartado 2694, Zona 3, Panama, Republic of Panama, Telephone: 69-4992 or 69-2169
Telex: 3638 (System: Intel)

Interested investors should telegram their bids to the Borrower's representative on June 3, 1986 but no later than 12:00 noon Eastern Standard Time. Bids should be open at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

Mr. William Gelman, RHUDO/PSA, USAID/Panama, Ave. Manuel Espinosa Batista, Apartado 6959, Panama 5, Republic of Panama
Telex: c/o American Embassy, USAID/Panama, Panama City, Republic of Panama
Michael G. Kitay, Agency for International Development, GC/PRE, Room 3208 N.S., Washington, D.C. 20523
Telex No.: 892703 AID WSA.

Each proposal should consider the following terms:

(a) *Amount:* U.S. $10.0 million. The borrowing should be so structured that the sum of the principal disbursed to the Borrower and interest unpaid, accrued and capitalized during the grace period should not exceed $10.0 million.

(b) *Term:* Up to 30 years.

(c) *Grace Period on Principal:* 10 years.

(d) *Grace Period on Interest:* Proposals should be made with a grace period up to three years on interest payments. Interest earned during the grace period will be capitalized and added to the principal to be amortized starting at the end of the ten year grace period for payments on principal.

(e) *Interest Rate:* Proposals should include both fixed rate and variable rate alternatives on interest. An option for Borrower to convert from variable to fixed interest rate should be maintained.

(f) *Draw Down:* Net proceeds from borrowing should be disbursed to Borrower upon signing through an escrow account. Notwithstanding, proposals with disbursements of 50 percent of borrowing's net proceeds upon signing and the remaining 50 percent to be disbursed six months later will be welcome.

(g) *Prepayment:* Proposals should include the possibility of partial or total prepayment of the loan by Borrower.

(h) *Investment Expense:* Borrower has agreed to pay for all investment expenses, fees, and costs at closing from the proceeds of the loan. All such costs, fees, and commissions shall be clearly specified in each proposal.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Director, Office of Housing and Urban Program, Agency for International Development, Room 3208 N.S., Washington, D.C. 20523, Telephone: (202) 647–9082.

Dated: May 21, 1986.

Mario Pita,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 86–11650 Filed 5–22–86; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Lodging of Amended Consent Decree Pursuant to the Clean Water Act; Saline Sewer Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 14, 1986, a proposed Amended Consent Decree in *United States* v. *Saline Sewer Company*, Civil Action No. 80–0948C(C), was lodged with the United States District Court for the Eastern District of Missouri. The proposed decree concerns violations by defendant of the Consent Decree entered on December 21, 1981, by discharging pollutants in excess of specified effluent limitations, by discharging pollutants from unpermitted locations, and by failing to comply with the implementation schedule of said Decree. The proposed Amended Decree imposes a civil penalty of one hundred twenty seven dollars ($127.00) and requires Saline to undertake and complete a program to maintain compliance with the Clean Water Act and the State of Missouri Clean Water Law.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Divison, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Saline Sewer Company*, D.J. Ref. 90–5–1–1–1323.

The proposed consent decree may be examined at the Office of the United States Attorney, Room 414, U.S. Court and Custom House, 114 Market Street, St. Louis, MO. 63101, and at the Region VII Office of the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–11632 Filed 5–22–86; 8:45 am]

BILLING CODE 4410–07–M

Antitrust Division

Proposed Termination of Final Judgment; Battery Council International et al.

Notice is hereby given that Battery Council International (as successor to the Association of American Battery Manufacturers), Sears, Roebuck and Co., Globe Battery Division of Johnson Controls, Inc. (formerly Globe-Union, Inc.), B.F. Goodrich Company, Goodyear Tire & Rubber Co., Inc., Firestone Tire & Rubber Company, NL Industries, Inc. (formerly National Lead Company), Wickes Companies, Inc. (as successor to Gamble Skogmo, Inc.), Western Auto Supply Co., Montgomery Ward & Co., and Exide Corporation (purchaser of Willard Storage Battery Co.) have filed with the United States District Court for the Western District of Missouri a motion to terminate the final judgment in *United States* v. *The Association of American Battery Manufacturers, et al.*, Civil No. 6199; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on February 6, 1950) alleged that the defendants had combined and conspired to monopolize the manufacture and sale of automobile batteries.

The judgment (entered on December 10, 1953) dissolved the Lead Disposal Company and limited membership in the defendant association to battery manufacturers. In addition the defendants were enjoined from agreeing to fix prices for the sale of used batteries sold to third persons, to divide, allocate, or assign customers of territories, to sell to any purchaser approved or designated by any person other than the seller, to restrict, hinder, or prevent the movement of used batteries to battery rebuilders, to sell or provide for the sale of used batteries or the lead salvaged therefrom only to certain designated third persons, to require or cause the destruction of used batteries, and to collect, compile, or disseminate any statistics, figures, or percentages on used batteries sold by or collected from a particular soure or the amount of lead salvaged therefrom.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, the defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202–633–2481), and at the office of the Clerk of the United States District Court for the Western District of Missouri, Western Division, Federal Courthouse, 811 Grand Avenue, Kansas City, Missouri 64106. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the judgment to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to John W. Clark, Chief, Professions and Intellectual Property Section, Antitrust Division, Department

of Justice, Washington, DC 20530 (telephone 202-724-6335).

Dated: May 13, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86-11724 Filed 5-22-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Steering Subcommittee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: June 10, 1986, 9:30 a.m., Rm S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavalle, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC, this 15th day of May 1986.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 86-11714 Filed 5-22-86; 8:45 am]

BILLING CODE 4510-28-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Georgia:
GA86-3 (Jan. 3, 1986)..... pp. 212-213.
Pennsylvania:
PA86-2 (Jan. 3, 1986)..... pp. 804, 807, p. 814.
PA86-3 (Jan. 3, 1986)..... pp. 816-818.
PA86-17 (Jan. 3, 1986)..... p. 906.
Rhode Island:
RI86-1 (Jan. 3, 1986)..... p. 965.
Virginia
VA86-3 (Jan. 3, 1986)..... p. 1060.
West Virginia:
WV86-2 (Jan. 3, 1986)..... pp. 1122, 1128, p.1137.

Volume II:

Arkansas:
AR86-7 (Jan. 3, 1986)..... p. 21.
Indiana:
IN86-2 (Jan. 3, 1986)..... p. 237.
IN86-3 (Jan. 3, 1986)..... p. 251-252.
IN86-4 (Jan. 3, 1986)..... p. 264.
IN86-6 (Jan. 3, 1986)..... pp. 284-285.
Minnesota:
MN86-5 (Jan. 3, 1986)..... pp. 497-500.
MN86-7 (Jan. 3, 1986)..... pp. 507-508, pp. 510-514, pp. 518-520.
MN86-8 (Jan. 3, 1986)..... pp. 525-531, pp. 537-538.
Missouri:
MO86-1 (Jan. 3, 1986)..... p. 542.
MO86-10 (Jan. 3, 1986)..... p. 606.

Nebraska:
NE86-3 (Jan. 3, 1986) ..... p. 624.
Ohio:
OH86-1 (Jan. 3, 1986) ..... pp. 662-666.
OH86-2 (Jan. 3, 1986) ..... pp. 676-682, p. 684, pp. 689, 691.
OH86-3 (Jan. 3, 1986) ..... pp. 697
OH86-29 (Jan. 3, 1986) ..... pp. 757-758, pp. 760-771, pp. 781, 795.
Wisconsin:
WI86-10 (Jan. 3, 1986) ..... pp. 991-992.

Volume III:

Alaska:
AK86-1 (Jan. 3, 1986)..... pp. 2-9.
Colorado:
CO86-1 (Jan. 3, 1986)..... p. 98.
Montana:
MT86-1 (Jan. 3, 1986)..... p. 154.
MT86-2 (Jan. 3, 1986)..... p. 172.
North Dakota:
ND86-1 (Jan. 3, 1986)..... p.204.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscriptions(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 16th day of May 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-11448 Filed 5-22-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-86-44-C]

Pontiki Coal Corp.; Petition for Modification of Application Mandatory Safety Standard

Pontiki Coal Corporation, P.O. Box 190, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Pontiki No. 1 Mine (I.D. No. 15-08413) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric equipment.

2. Petitioner states that the heights in the mine are inconsistent ranging from 36 to 72 inches, with many dips and hills.

3. Installation of cabs or canopies on the equipment would limit the operator's vision and could damage energized cables hung overhead.

4. For these reasons, petitioner requests a modification of the standard in mining heights less than 46 inches.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 23, 1986. Copies of the petition are available for inspection at that address.

Dated: April 22, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-11715 Filed 5-22-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-47-C]

Whitaker Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Whitaker Coal Corporation, P.O. Box 5001, Hazard, Kentucky 41701 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its EAS No. 1 Mine (I.D. No. 15-02085) located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to hazardous roof conditions and the length and age of the workings it is hazardous for miners to make the weekly examinations.

3. As an alternate method petitioner proposes to establish ventilation check points at specific locations.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 23, 1986. Copies of the petition are available for inspection at that address.

Dated: April 22, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-11716 Filed 5-22-86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-64; Exemption Application No. D-6167 et al.]

Grant of Individual Exemptions; Intrec, Inc., Money Purchase Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public

inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

[Prohibited Transaction Exemption 86–64;

Intrec, Inc. Money Purchase Pension Plan and Intrec, Inc.

Defined Benefit Pension Plan (the Plans)

Located in Santa Monica, California

Exemption Application Nos. D–6167 and D–6168]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (A) through (E) of the Code, shall not apply to the sale for cash by the Plans of certain real property to Questor, Inc., a party in interest with respect to the Plans, provided that the price received is not less than the fair market value of the real property on the date of the sale, and provided further that the net cash proceeds to the Plans are at least equal to the Plans' cash outlay for the property to the date of sale plus interest on funds advanced by the Plans at 1% per annum over the 1-year Treasury Bill rate on the date of advance.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1986 at 51 FR 9292.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Mandel-Kahn Industries, Inc. Profit Sharing Plan (the Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 86–65; Exemption Application No. D–6450]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loans of money (the Loans) by the Plan to its sponsor, Mandel-Kahn Industries, Inc. (the Company), nor to the personal guarantees of the Company's obligation for the term of the Loans by Joel H. Mandel and Jack B. Kahn, parties in interest with respect to the Plan.

Effective Date: This exemption is effective February 10, 1986.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 18, 1986 at 51 FR 9293.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Shoney's, Inc. Profit Sharing Plan (the Plan) Located in Nashville, Tennessee

[Prohibited Transaction Exemption 86–66; Exemption Application No. D–6581]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of a parcel of real estate located at 5012 South Third Street, Louisville, Kentucky (the Property) to Shoney's, Inc. for $292,000 in cash, provided such amount is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 2, 1986 at 51 FR 11370.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–11717 Filed 5–22–86; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D-6270]

Withdrawal of the Proposed Exemption Involving Kenneth M. Spain, D.D.S., M.S., P.C. Pension Plan (the Plan) Located in Bozeman, MT

In the **Federal Register** dated February 21, 1986 (51 FR 6330), the Department of Labor published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned a proposed purchase by the Plan of a parcel of unimproved real property from Donna M. Spain, a trustee of the Plan.

By letter dated March 31, 1986, the applicant requests that the exemption application be withdrawn.

Accordingly, the notice of pendency is hereby withdrawn.

Signed at Washington, DC, this 9th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration.

[FR Doc. 86-11718 Filed 5-22-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6121 et al.]

Proposed Exemptions; Wynn & Graff, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendancy before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearings Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendancy, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Wynn and Graff, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Wynn and Graff, Inc. Pension Plan (the Pension Plan; Collectively, the Plans) Located in Nashville, Tennessee

[Application No. D-6121]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the proposed exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the June 29, 1979 cash sale by the Pension Plan to the Profit Sharing Plan of an undivided, one-half collective interest (the Interest) in certain real property (the Real Property) for $150,000, provided the price paid for the Interest was not less than its fair market value at the time the transaction was consummated.

In addition, if the proposed exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Profit Sharing Plan to Wynn and Graff, Inc. (the Employer) of the Real Property, for the total consideration of $450,000, provided the price paid for the Real Property is not less than its fair market value at the time the transaction is consummated.

EFFECTIVE DATE: If the proposed exemption is granted, it will be effective June 29, 1979 with respect to the sale to the Profit Sharing Plan by the Pension Plan of the Interest in the Real Property.

Summary of Facts and Representations

1. The Plans, which share common participants, consist of the Pension Plan and the Profit Sharing Plan. As of August 15, 1985, the Pension Plan had 40 participants and total assets having a fair market value of $755,420. Also on that date, the Profit Sharing Plan had 44 participants and total assets having a fair market value of approximately $1,154,971. The applicant represents that the Plans are not parties in interest with respect to each other within the meaning of section 3(14) of the Act.

2. The trustee of the Plans (the Trustee) is the Third National Bank in Nashville located in Nashville, Tennessee. The Trustee makes investment decisions for the Plans. The Employer, which is engaged in the wholesale business of upholstery, maintains its principal place of business at 223-229 Boscobel Street, Nashville, Tennessee.

3. Four parcels or improved and unimproved property comprise the Real Property. On March 15, 1965, the Profit Sharing Plan acquired two parcels of the Real Property from Wynn Properties, Inc. (Wynn Properties), a subsidiary of the Employer. On June 30, 1965, Wynn Properties sold a third parcel of the Real Property to the Profit Sharing Plan for $2,200. On August 11, 1966, the Profit Sharing Plan sold an undivided one-half interest in the three parcels of the Real Property to the Pension Plan. On

December 28, 1973, tht Employer sold an undivided one-half interest in a fourth parcel of the Real Property to the Profit Sharing Plan and an undivided one-half interest in the same parcel to the Pension Plan for the total consideration of $98,167.

4. On December 28, 1973, the Plans executed a formal lease (the Lease) of the Real Property to the Employer for a term of 15 years. The Lease, which became effective on January 1, 1974, provided for an annual rental of $30,000 for the first five years. On January 1, 1979 and January 1, 1984, the annual rental was increased to $33,000 and $36,000, respectively. The Lease has required the Employer to pay all taxes assessed against its business as well as insurance premiums, utilities and repair costs.[1]

5. On June 29, 1979, the Profit Sharing Plan acquired the Pension Plan's collective Interest in the Real Property for $150,000. The purchase price, which was paid in cash, was determined to be the fair market value of the Interest under the terms of an appraisal of the Real Property performed on January 5, 1979 by Mr. Frank W. Bainbridge, M.A.I., S.R.P.A., an independent appraiser from Nashville, Tennessee. The Profit Sharing Plan and the Pension Plan incurred no real estate fees or commissions as a result of the sale. Further, at the time of the sale, the Trustee determined that it was in the best interests of the Profit Sharing Plan and the Pension Plan that the Profit Sharing Plan purchase from the Pension Plan the Interest. Following the sale, the Profit Sharing Plan became the exclusive lessor to the Employer.

6. The Employer desires to terminate its existing leasing arrangement with the Profit Sharing Plan by purchasing the Real Property for cash in the amount of $450,000. The Profit Sharing Plan will not be required to pay any real estate fees or commissions in connection with the proposed transaction.

7. The value of the Real Property was initially established on January 6, 1984 by Mr. Joseph M. Draper, M.A.I. (Mr. Draper), an independent appraiser from Nashville, Tennessee. Based on data contained in his appraisal report, Mr. Draper placed the fair market value of the Real Property at $425,000 and the net fair market rental value of the Real Property at $51,000 per annum. In an appraisal report dated May 23, 1985, two independent M.A.I. appraisers, Messers. Marvin A. Maes and James L. Harper, also from Nashville, Tennessee, revalued the Real Property at $450,000 as of March 6, 1985 and established its fair market rental value at $58,000 per annum.

8. In addition to purchasing the Real Property, the Employer states that at the time of closing, it will pay the Profit Sharing Plan $17,296. (This amount reflects the difference between the rentals that have been paid under the Lease at the rate of $3,025 per month from July 1, 1984 through June 30, 1985 and the rental rate as determined by the 1984 and 1985 appraisals.) The Employer also represents that for the period July 1, 1985 to the date of closing, it will pay the Profit Sharing Plan an amount representing the difference between the rent required under the Lease and the fair market rental value of the Real Property as determined by the 1985 appraisal. The Employer further states that at closing, it will pay the Profit Sharing Plan an amount reflecting interest on the rental deficiencies. Finally, the Employer represents that it will pay any excise taxes that may be owed to the Internal Revenue Service (the Service) by reason of the leasing of the Real Property within 60 days of the granting of the exemption.

9. In summary, it is represented that the transactions have satisfied or will satisfy the criteria of section 408(a) of the Act because: (a) The June 1979 sale of the Interest by the Pension Plan to the Profit Sharing Plan was made pursuant to an independent appraisal and a determination by the Trustee that the sale was in the best interests of the Plans; (b) the prospective sale of the Real Property by the Profit Sharing Plan to the Employer will be a one-time transaction for cash; (c) the Profit Sharing Plan will not incur any real estate fees or commissions in connection with the proposed sale; (d) the purchase price for the Real Property will be based on its most recent appraised value as determined by an independent appraiser; (e) at the time of closing, the Employer will pay the Profit Sharing Plan all deficient rent plus interest with respect to the leasing of the Real Property; and (f) the Employer will pay the Service all applicable excise taxes which may be due within 60 days of the granting of the exemption.

For further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[1] The applicant states that the Lease has satisfied the requirements of section 414(c)(2) of the Act and as such, it believes the transaction is statutorily exempt from the restrictions of section 406 and 407(a) of the Act. However, the Department expresses no opinion on whether these conditions of section 414(c)(2) have been satisfied.

M&M Metals, Inc. Profit Sharing Plan (the Profit Sharing Plan) and Beryl Merritt Money Purchase Pension Plan (the Money Purchase Plan; collectively, the Plans) Located in Cincinnati, Ohio

[Application Nos. D–6572 and D–6573]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed lease of a certain portion of a parcel of improved real property (the Property) by the Plans to M&M Metals International, Inc. (M&M Metals), the sponsor of the Profit Sharing Plan, provided that the terms of the lease are at least as favorable to the Plans as an arm's-length transaction with an unrelated party; and (2) the proposed sale of the Property to M&M Metals pursuant to an option to purchase the Property under the lease, provided that the sales price is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plans are defined contribution plans. The Profit Sharing Plan has only one participant, Mr. Jerry Mellman (Mr. Mellman), and total plan assets of $584,966.03 as of February 28, 1986. The Money Purchase Plan also has only one participant, Mr. Beryl Merritt (Mr. Merritt), and total plan assets of $1,401,164 as of October 31, 1985. Mr. Mellman and Mr. Merritt are the trustees of their respective Plans. M&M Metals is an Ohio corporation engaged in the business of the recycling metal and selling scrap. Mr. Mellman and Mr. Merritt each own one-third of the outstanding stock of M&M Metals.

2. The Property consists of three buildings and an adjacent parking lot located at 841 Delway Street, Cincinnati, Ohio. The Plans purchased the Property in May, 1986 from the Seybold Company, an unrelated party, for $75,000. The Plans have incurred a total cost, including the purchase and the subsequent construction of a new building, of approximately $275,000 with respect to the Property. The applicant represents that there has been substantial deterioration to the Property and the surrounding neighborhood since

the time of purchase. The Property was sold on October 16, 1981 to Sigma-Tri-State Industries, Inc., another unrelated party, for $197,000, and carried a mortgage of $180,000. The mortgage was defaulted upon and the Property had to be reacquired by deed in lieu of foreclosure in December 1982.

The applicant states that a portion of the Property, consisting of an office building of approximately 2,600 square feet, another building containing approximately 8,400 square feet, and the land between the two buildings, is currently being leased to Tom Butscha, Inc., an unrelated third Party, (the Butscha Lease) at an annual rental of $15,000. The applicant states further that the remaining portion of the Property has been vacant for many months with no prospective tenants. M&M Metals proposes to lease the portion of the Property currently vacant (The Vacant Parcel), consisting of a small concrete block building and an adjacent parking lot.

3. The Property was appraised on November 1, 1985 by Mr. M. Robert Garfield, Executive Vice President of West Shell, Inc. (Mr. Garfield), an independent real estate appraiser in Cincinnati, Ohio, as having a fair market value of $200,000. Mr. Garfield represents that the fair market rental value for the Vacant Parcel would be $12,000 per year. Thus, Mr. Garfield states that the $15,000 per year from the Butscha Lease and the potential $12,000 per year for the Vacant Parcel would yield a $27,000 per annum gross return for the Property, which compares favorably with similar commercial properties in the area.

4. The applicant represents that the Vacant Parcel will be leased to M&M Metals for $12,000 per year in accordance with Mr. Garfield's appraisal. The proposed lease (the Lease) will be for a five year term with no renewals. M&M Metals, as lessee, will have an option to purchase the Property (the Option) at any time during the five year term. The applicant states that the Lease will provide that the purchase of the Property pursuant to the Option will be for cash at a price no less than the fair market value of the Property on the date that the Option is exercised, as established by an independent qualified appraiser. The Lease will provide further that M&M Metal will have a right of first refusal upon ten days' notice of a sale of the Property to the third party that will allow M&M Metals to buy the Property for cash at the terms under which the Plans propose to sell the Property to such third party. In addition, M&M Metals will pay for all insurance and taxes on the Property under the Lease and all repairs not required to be paid under the Butscha Lease.

5. The applicant states that the transaction would be in the best interests of the Plans and their respective participants because it would allow the utilization of the Vacant Parcel and enable the Property to be sold in the future at fair market value. The applicant represents that since the price a potential buyer of commercial property is willing to pay is a function of the rental income that property is producing, the current inability of the Plans to fully rent the Property would likely produce an inadequate price if the Property were to be listed for sale. The applicant believes that it would be benefical to the Plans if M&M Metals decided to exercise the Option to be contained in the Lease, since the sales price under the Option would be the fair market value for the Property as established by an independent appraiser. The Plans would thereby reduce their risk from the investment in the Property and could use the proceeds from the sale of the Property to achieve greater diversification in their investments. The Plans will pay no commissions or other expenses with respect to the sale of the Property.

6. The Profit Sharing Plan's one-half ownership interest in the Property represents only approximately 17 percent of its assets, based on the fair market value of the Property as appraised by Mr. Garfield. Further, the Money Purchase Plan's one-half ownership interest in the Property represents only approximately 7 percent of its assets, based on the Property's fair market value as appraised by Mr. Garfield.

7. The applicant states that there is little chance of there ever being any participants in either of the Plans other than Mr. Merrill or Mr. Merritt. However, if there are ever any other participants in the Plans, a separate defned contribution plan for such employee will be established by the employer containing provisions comparable to those contained in the existing Plan of that employer.

8. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) The Plans will be able to lease the Vacant Parcel at its fair market rental value as determined by an independent appraiser; (b) the sale of the Property to M&M Metals under the Option will be at a price which is no less than the Property's fair market value as established by an independent, qualified appraiser at the time the Option is exercised; (c) the Plans will not pay any expenses with respect to the proposed sale of the Property to M&M Metals; and (d) Mr. Mellman and Mr. Merritt, as the sole participants of their respective Plans and the only participants to be affected by the transaction, have determined that the transaction is in the best interest of the Plans and desire that the transaction be consummated.

Notice to Interested Persons: Because Mr. Mellman and Mr. Merritt are the only participants in their respective Plans to be affected by the proposed transaction, it has been determined that their is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bear, Stearns & Co., Inc. and Custodial Trust Company

[Application No. D–6633]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lending of securities to Bear, Stearns & Co., Inc. (Bear Stearns) by employee benefit plans for which Custodial Trust Company (CTC) acts as directed trustee or custodian and securities lending agent and to the receipt of compensation by CTC in connection with these transactions, if the conditions incorporated in the representations set forth below are met.

Summary of Facts and Representations

1. Bear Stearns, a wholly owned subsidiary of the Bear Stearns Companies, Inc., is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and also a member of the National Association of Securities Dealers. Bear Stearns is one of the

largest investment firms in the United States, with consolidated capital (equity and subordinated debt) of over $700 million.

2. Bear Stearns, acting as principal, facilitates securities loans made by institutions to brokerage firms and other entities which need a particular security for a certain period of time in order to satisfy deliveries in cases of short sales or where a broker fails to receive securities it is required to deliver. Bear Stearns is one of the largest institutional securities lenders in the United States, lending securities equal in value to approximately $2 billion on an average daily basis. In making such loans, Bear Stearns carefully reviews the credit worthiness of the borrowing brokers.

3. CTC is a wholly owned subsidiary of the Bear Stearns Companies, Inc., which is also the parent company of Bear Stearns. CTC is organized as a trust company in New Jersey which provides fiduciary services to institutions, including serving as trustee or custodian to employee benefit plans. CTC also has been offering securities lending services to institutions. As of March 1, 1986, CTC served as securities lending agent for approximately $350 million in lendable securities. As securities lending agent, CTC assures that the required collateral is received by CTC and that adequate levels of collateral are maintained. All of CTC's procedures for lending securities are designed to comply with the applicable conditions of Prohibited Transaction Exemption (PTE) 81–6 and PTE 82–63.[1]

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender would then be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. Where a loan of securities is collateralized with Government or Federal Agency securities or bank letters of credit, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity.

5. CTC requests an exemption for the lending of securities owned by certain pension plans for which it serves as directed trustee or custodian (client-plans) to Bear Stearns, following disclosure of its affiliation with Bear Stearns, under either of two arrangements described as Plan A and Plan B and for the receipt of compensation in connection with such transactions. CTC will have no discretionary authority or control over the investment decisions of these plans. Its discretion will be limited to activities such as negotiating the terms of the securities loans with Bear Stearns and investing any cash collateral on the loans. Because Bear Stearns is a subsidiary of the parent company of CTC, the lending of securities to Bear Stearns by plans for which CTC serves as trustee or custodian may be outside the scope of relief provided by PTE 81–6 and PTE 82–63.[2]

6. When a loan is collateralized with cash, CTC will invest the cash in short-term securities or interest-bearing accounts and will rebate a portion of the earnings to Bear Stearns on behalf of the plan. Bear Stearns will pay a fee to the lending plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under both Plan A and Plan B, the plan will pay a fee to CTC for providing lending services to the plan which will reduce the income earned by the plan from the lending of securities to Bear Stearns. The plan and CTC will agree in advance to this fee which will represent a percentage of the income the plan earns from its lending activities. Several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the plan assets involved in the transactions. In addition, the applicant represents that each of the two arrangements incorporates the relevant conditions contained in PTE 81–6 and PTE 82–63.

7. *Plan A.* A fiduciary of a client-plan who is independent of CTC and Bear Stearns must sign a Securities Lending Authorization before the plan may particpate in CTC's securities lending program. This authorization describes the operation of the landing program and allows CTC to lend securities held by the client-plan to securities brokers, including Bear Stearns, as selected by CTC. The authorization also sets forth, in an attachment, the basis and rate for CTC's compensation from the plan for the performance of securities lending services.

8. The independent fiduciary also must sign a Bear Stearns Lending Authorization before CTC may include security loans to Bear Stearns in the lending activities of the client-plan. The Bear Stearns Lending Authorization will specify, in an attached exhibit, the method of determining the daily securities lending rates (fees and rebates) and the maximum rebate rate payable to Bear Stearns. A client-plan may terminate both the Securities Lending Authorization and the Bear Stearns Lending Authorization at any time.

9. CTC, as securities lending agent, will negotiate a Customer Securities Loan Agreement (basic loan agreement) with Bear Stearns on behalf of its client-plans. An independent fiduciary of a client-plan will approve the terms of the agreement before that fiduciary executes the Bear Stearns Lending Authorization. The basic loan agreement will specify, among other things, the right of the client-plan to terminate a loan at any time (subject to the customary notification period) and the plan's rights in the event of any default by Bear Stearns. The agreement will explain the basis for compensation to the plan for lending securities to Bear Stearns under each category of collateral. The agreement also will contain a requirement that Bear Stearns must pay all transfer fees and transfer taxes related to the security loans.

10. Before entering into the basic loan agreement, Bear Stearns will furnish its most recent available audited and unaudited financial statements to CTC, who, in turn, will provide the statements to a client-plan before the plan is asked to approve the terms of the agreement. The agreement will contain a requirement that Bear Stearns must promptly notify lenders at the time of a loan of any material adverse changes in

[1] PTE 81–6 (46 FR 7527, January, 23, 1981) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties-in-interest.

PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1) (E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

[2] Condition 1 of PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

its financial condition. If any such changes have taken place, CTC will request that an independent fiduciary of the plan approve the loan in view of the changed financial condition.

11. The client-plan and CTC will agree to the fee CTC will receive for its services as lending agent prior to the commencement of any lending activity. The agreement by CTC to provide securities lending services to a client-plan will be in writing and subject to prior written approval of a fiduciary of the client-plan who is independent of Bear Stearns and CTC.[3] The agreement will allow termination by the plan without penalty to the plan within five business days of written notice. Before entering into an agreement, CTC will provide the plan with any reasonably available information which it believes is necessary for the plan to make a determination whether to enter into or renew the agreement and such other information as the plan may request.

12. Each time a plan loans securities to Bear Stearns pursuant to the basic loan agreement, Bear Stearns will execute a designation letter specifying, in part, the securities to be loaned, the necessary amount of collateral, the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the client-plan as those of an arm's-length transaction would be between unrelated parties.

13. CTC will credit to the account of the client-plan all interest, dividends and the like on the loaned securities, including distributions and rights of any kind. The basic loan agreement will provide that the plan may terminate any loan at any time. Upon a termination, Bear Stearns will deliver the loaned securities back to the client-plan within five business days of written notification. If Bear Stearns fails to return the securities within the designated time, the client-plan has certain rights that it may exercise under the agreement.

14. CTC will establish each day a written schedule of lending fees and rebate rates in order to assure uniformity of treatment among borrowing brokers and to limit the discretion CTC would have in negotiating securities loans to Bear Stearns. Loans to Bear Stearns on that day will be made at rates on the daily schedule or at rates which may be more advantageous to the client-plans. In no case will loans be made to Bear Stearns at rates below those on the schedule. The daily rate schedule will be based on two variables: the current value of short-term funds, and market conditions as reflected by demand for securities by borrowers other than Bear Stearns.

15. CTC will also adopt a maximum daily rebate rate for cash collateral payable to Bear Stearns on behalf of a plan. This maximum rebate will not exceed a stated percentage of the mean between the bid and asked quotations of the "broker call rate" published daily in the Wall Street Journal for the previous day. Moreover, when cash is used as collateral, the daily rebate rate will always be at least 50 basis points lower than the rate of return available to CTC from authorized investments for cash collateral.[4] If interest rates rise, the rebate applicable to Bear Stearns will never be increased above the daily rate at which a loan was originnally made. CTC will submit the formula for determining the maximum daily rebate rate to an independent fiduciary of a client-plan for approval before lending any securities to Bear Stearns on behalf of the plan.

16. For collateral other than cash, the rate charged by CTC the previous day is reviewed for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and is currently one percent of the current value of the collateral. Because 50 percent or more of securities loans by client-plans will be to unrelated brokers or dealers, the competitiveness of CTC's rate schedule will be continuously tested in the marketplace. Accordingly, loans to Bear Stearns should result in competitive rate income to the lending client-plan.

17. CTC will loan securities available for lending to borrowers on a first come, first served basis. This will provide additional assurance of uniformity of treatment among borrowing brokers.

18. Bear Stearns will make a guarantee to each lending client-plan that the plan will incur no loss on its loans of securities to Bear Stearns. Accordingly, Bear Stearns will assure the plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending securities to Bear Stearns. The applicant contends that, as a result of this guarantee, the rate of return earned by client-plans from lending to Bear Stearns will in total exceed the return from lending securities to other brokers.

19. CTC will receive collateral from Bear Stearns by physical delivery or book entry in a securities depository by the close of business on the day the loaned securities are delivered to Bear Stearns. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit issued by a person other than Bear Stearns or its affiliates. The market value of the collateral on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securites. The basic loan agreement will give the client-plan a continuing security interest in and a lien on the collateral. CTC will monitor the level of the collateral daily to ensure that it is maintained at no less than 102 percent. If the market value of the collateral falls below 102 percent of that of the loaned securities, CTC will require Bear Stearns to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

20. A client-plan that loans securities to Bear Stearns will recieve a weekly report with which to monitor lending activity, rates on loans to Bear Stearns compared with loans to other brokers, and the level of collateral on the loans. The weekly report will show, on a daily basis, the market value of all outstanding security loans to Bear Stearns and to other borrowers as compared to the total collateral held for both categories of loans.

21. The weekly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The weekly report also will state, on a daily basis, the rates at which securities are loaned to Bear Stearns compared with those at which securities are loaned to other bankers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

22. CTC also will send a monthly report to each client-plan participating in the lending program. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will show each security loaned, the number of shares involved, the value of the security for collateralization purposes, the current value of the collateral, the rate at which the security is loaned, and the number of days the security has been on loan.

23. Only client-plans with assets having an aggregate market value of at least $50 million will be permitted to

[3] This closely parallels conditions c and d of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary."

[4] These short-term investments include repurchase agreements, certificates of deposit, and Treasury bills.

loan securities to Bear Stearns. The applicant maintains that this restriction is intended to assure that any lending to Bear Stearns will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

24. CTC will record on audio tape all telephone traffic between its securities lending department and all borrowers, including Bear Stearns. The telephone tapes will be retained for a period of at least six months. This recording procedure will enable client-plans and the Department to review CTC's adherence to its policy of lending securities at or above the daily specified rates to the first interested borrower.

25. *Plan B.* Bear Stearns will directly negotiate "exclusive borrowing" agreements with client-plans for which CTC serves as directed trustee or custodian. Under such an agreement, Bear Stearns will have exclusive access for a specified period of time to borrow certain securities of a client-plan pursuant to certain conditions. CTC will not participate in the negotiation of the agreement. The involvement of CTC will be limited to such activities as handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports.

26. Upon delivery of loaned securities to Bear Stearns, CTC, as securities lending agent for a plan, will receive from Bear Stearns the same day by physical delivery or book entry in a securities depository collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, or other collateral permitted under PTE 81–6. The market value of the collateral on the preceding day will be at least 102 percent of the market value of the loaned securities. CTC will monitor the level of the collateral daily and, if its market value falls below 102 percent, will require Bear Stearns to deliver sufficient additional collateral on the following day. CTC will provide a weekly report to the client-plan showing, on a daily basis, the aggregate market value of all outstanding security loans to Bear Stearns and the aggregate market value of the collateral.

27. Before entering into an agreement, Bear Stearns will furnish to the plan the most recent audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by Bear Stearns that for each time it borrows securities, there have been no material adverse changes in its financial condition.

28. In exchange for the exclusive right to borrow certain securities from a client-plan, Bear Stearns will pay the plan either a flat fee or a minimum flat fee plus a prior negotiated percentage based on the total balance outstanding of borrowed securities. In light of this fee arrangement, all earnings generated by cash collateral will be returned to Bear Stearns. CTC will cedit to the account of the plan all interest, dividends or other distributions on any borrowed securities.

29. The "exclusive borrowing" agreement may be terminated by either party to the agreement at any time. Upon termination, Bear Stearns will deliver any borrowed securities back to the plan within five business days of written notice of termination. If Bear Stearns fails to return the securities or equivalent, the plan has certain rights under the agreement. Bear Stearns will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

30. CTC will receive a fee for its lending services which will be computed as a percentage of the income earned by the client-plan from its securities lending activity. The plan and CTC will agree in advance to the fee. The agreement for CTC to provide securities lending services to the client-plan will be in writing and subject to prior written approval of a plan fiduciary who is independent of Bear Stearns and CTC. The agreement will allow termination by the plan within five business days of written notice without penalty to the plan except for the return to Bear Stearns of part of the flat fee paid by Bear Stearns to the plan, if the plan also has terminated its "exclusive borrowing" agreement with Bear Stearns. Before entering into an agreement with a client-plan to provide securities lending services to the plan, CTC will furnish to the plan any reasonably available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

31. In summary, the applicant represents that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) Plan A requires approval of the basic loan agreement and the Bear Stearns Lending Authorization by a plan fiduciary independent of Bear Stearns and CTC before a client-plan lends any securities to Bear Stearns, while under Plan B Bear Stearns will directly negotiate "exclusive borrowing" agreements with a client-plan; (2) the lending arrangements will permit the client-plans to benefit from Bear Stearns' substantial market position as a securities lender and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (3) Bear Stearns will provide sufficient information concerning its financial condition to a client-plan before the plan lends any securities to Bear Stearns; (4) the collateral on each loan to Bear Stearns will be at least 102 percent of the market value of the loaned securities, which exceeds the 100 percent collateral required under PTE 81–6, and will be monitored daily by CTC; (5) CTC will furnish a weekly report and a monthly report to the client-plans so that an independent fiduciary may monitor a plan's lending activity to Bear Stearns in comparison with the lending to other brokers; (6) security loans to Bear Stearns, under Plan A, will not exceed 50 percent on average of the total loan volume, so that the competitiveness of the daily rate schedule may be tested; (7) only client-plans for which CTC serves as directed trustee or custodian will lend securities to Bear Stearns; (8) the terms of each loan will be at least as favorable to the plans as those of an arm's-length transaction between unrelated parties; and (9) all the procedures under Plans A and B will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Pincus, Schissel, Barricks and Alexander, M.D. Self-Employed Retirement Plan (the Plan) Located in Minneapolis, Minnesota

[Application No. D–6652]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loan of $45,000 to Dr. Robert L. Barricks (Dr. Barricks) from his individually directed account (the Account) in the Plan, under the terms describerd in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party. Dr.

Barricks is an owner-employee with respect to the Plan as defined in section 401(c)(3) of the Code due to his 25% ownership of Pincus, Schissel, Barricks and Alexander, M.D. (the Employer), a medical partnership which is the plan sponsor. Section 408(d)(1) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the lending of any part of the corpus or the income of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject loan. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975(c)(2) of the Code.

Summary of Facts and Representations

1. The Plan is a Keogh plan established by the Employer. The Employer has four equal 25% partners, one of whom is Dr. Barricks. The Plan has 11 participants. Dr. Barricks currently has $198,500 in the Account. The Plan Administrator is the Richfield Bank and Trust Company of Richfield, Minnesota (the Bank). The Plan provides for segregated accounts and for participant direction of the investment of the accounts.

2. Dr. Barricks owns a residence at 4825 Sheridan Avenue S., Minneapolis, Minnesota (the Property). The first mortgage on the Property is held by GMAC Mortgage Corporation, and had a principal balance of $128,619 as of December 31, 1985.

3. Dr. Barricks wishes to borrow $45,000 from his Account in order to replace the existing second mortgage on the Property. The loan would be at an interest rate of 11.25% amortized over 30 years. The United Mortgage Corporation of Bloomington, Minnesota, has represented that this is its current rate for 30 year second mortgages.

4. The loan from the Account will be secured by a second mortgage on the Property. The Property has been appraised by Mr. William F. Rieckhoff, an independent realtor with Realty Center of Minneapolis, Minnesota, as having a fair market value of $320,000 as of February 18, 1986. Thus, the Property has a fair market value approximately $200,000 greater than the principal balance of the first mortgage. The Property's fair market value will be approximately 190% of the principal amount of all encumbrances upon it. The second mortgage will be recorded with the Hennepin County Recorder.

5. The Bank, which is the trustee for the Plan, has reviewed the proposed transaction, and represents that the transaction is in the best interests of the Account. The Bank notes that Dr. Barricks is the only Plan participant to be affected by the transaction, and that the interest rate and security for the loan are appropriate. The Bank will monitor the loan and take whatever action is necessary in order to enforce the Account's rights under the terms of the loan, including foreclosure on the mortgage in the event of default.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because (1) the loan represents less than 25% of the assets of the Account; (2) the interest rate for the loan is identical to that required by a local independent mortgage corporation; (3) the loan will be secured by a second mortgage on the Property, which has been appraised as having a fair market value approximately 190% of the principal amount of all encumbrances upon it; (4) the Plan's independent trustee has determined that the transaction is appropriate for the Plan and in the best interests of the Account; (5) the Bank will monitor the loan and take whatever action is necessary to enforce the Account's rights under the loan; and (6) Dr. Barricks is the only participants to be affected by the transaction, and he desires that it be consummated.

Notice to Interested Persons: Because Dr. Barricks is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute this notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of May 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–11719 Filed 5–22–86; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Fourth Quarter CY 1985; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health or safety). During the fourth quarter of calendar year 1985, the following incidents were determined to be abnormal occurrences using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090,

Vol. 8, No. 4 ("Report to Congress on Abnormal Occurrences: October-December 1985"). This report will be available in the NRC's Public Document Room, 1717 H Street NW. Washington, DC 20555, about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

Inoperable Main Steam Isolation Valves

One of the general abnormal occurence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence.

Date and Place—On September 27, 1985, during main steam isolation valve (MSIV) surveillance testing at Burnswick Unit 2, Carolina Power and Light Company (the licensee) discovered that MSIVs F028A, F022C and F028C would not fast close. At the time of the event, the plant was in cold shutdown following a controlled shutdown from power on September 26, 1985, as a precautionary measure in advance of the approaching hurricane Gloria. Brunswick Unit 2 is a General Electric-designed boiling water reactor located in Brunswick County, North Carolina.

Nature and Probable Consequences—The main steam line isolation system includes isolation valves that, individually or collectively, are designed to:

1. Close within the time established by design basis accident (DBA) analysis to limit the release of reactor collant or radioactive materials;
2. Close when required, despite the single failure of either valve or the associated controls, to provide a high level of reliability for the safety function;
3. Use separate energy sources, as the motive force, to independently close the redundant isolation valves in each individual steam line;
4. Use local storage energy (compressed air and/or springs) to close at least one isolation valve in each steam line without relying on continuity of any variety of electrical power for the motive force to achieve closure;
5. Be able to close during or after design basis seismic loadings to assure isolation; and
6. Be testable during normal operating conditions, to demonstrate that the valves will function.

Two MSIVs (F022 and F028) are welded in a horizontal run of each of the four main steam lines (A-D), with one valve as close as possible to the primary containment barrier inside, and the other just outside the barrier. The valves, when closed, form part of the nuclear system process barrier for openings outside the primary containment, and part of the primary containment barrier for nuclear system breaks inside the containment.

The valve is held open by pneumatic pressure and loss of air allows a spring assist to close the valve. The control unit is attached to an air cylinder and contains the pneumatic, ac, and dc control valves for opening, closing, and slow speed exercising of the main valve. The control power for each valve is supplied at 120 volts ac, 60 Hz, and 125 volts dc. Remote manual switches in the control room enable the reactor operator to operate each valve at fast speed (3 to 10 seconds) or at slow speed (45 to 60 seconds) for exercising or testing.

In the event that the main steam line should rupture downstream from the valve, the stream flow quickly increases to 200 percent of rated flow and is limited from further increase by the venturi flow restrictor upstream of the valves.

During approximately the first 75 percent of closing, the valve has little effect in reducing flow because the flow is choked by the venturi restrictor upstream from the valves. After the valve is more than about 75 percent closed, flow is reduced as a function of the valve area versus travel characteristic.

The safety objectives of the MSIVs are to:

1. Prevent damage to the fuel barrier by limiting the loss of reactor coolant in case of a major leak from the steam piping outside the primary containment;
2. Limit release of radioactive materials by closing the nuclear system process barrier in case of gross release of radioactive materials from the reactor fuel to the reactor cooling water and steam; and
3. Limit release of radioactive materials by closing the primary containment barrier in case of a major leak from the nuclear system inside the primary containment.

In the direct cycle boiling water nuclear power plant, the reactor steam goes to the turbine and to other equipment outside the reactor containments. Radioactive materials in the steam are released to the environs through process openings in the steam system, or they can escape from accidental openings. A large break in the steam system can void the water from the reactor core faster than it is replaced by feedwater. The analysis of a complete, sudden steam line break outside the primary containment shows that the fuel barrier is protected against loss of cooling if MSIV closure takes 10.5 seconds or less (including as much as 0.5 seconds for the instrumentation to initiate valve closure after the break).

Double isolation valves are provided on each of the main steam lines to minimize the potential leakage paths from the containment in case of a line break. Only one valve in each line is required to maintain the integrity of the containment. The Technical Specification surveillance requirements are based on the operating history of this type valve. The maximum closure time of five seconds has been selected to contain fission products and to ensure the core is not uncovered following line breaks.

Initial investigation determined a problem existed within the double solenoid valve on the actuator of MSIV F028A. In addition, a subsequent fast closure test of MSIV F028C revealed a closure time of approximately 45 seconds. A decision was made not to troubleshoot the F022C valve until it could be removed and diassembled. On September 28, 1985, the licensee began to disassemble, visually inspect, and collect samples of foreign materials in the double solenoid valves of the three subject MSIVs.

From the visual inspection, it was concluded the F028C valve had failed to fast close due to the exhaust port being blocked. The F022C valve failed to fast close because the solenoid valve disc was adhered to the valve seat and the valve could not move. The F028A valve failed either because the solenoid valve disc was stuck to its seat or because disc material had broken off and plugged the exhaust port.

An evaluation of the solenoid valve from the F028C by the valve vendor, ASCO, concluded the valve elastomer had degraded due to contamination. The vendor did not determine the contaminant; however, it is felt it was not introduced during manufacture or assembly of the solenoid valve assembly.

On September 28, 1985, a systems engineering task force was established by the licensee to determine the cause of the failures and to recommend and implement corrective actions.

The pilot valves that failed are ASCO Model 8323A36E double solenoid valves. Each valve has one ac and one dc coil. Both solenoids must be deenergized for the value to close the supply port and open the exhaust port. The valves operate with both solenoids normally energized. This model was installed in Unit 1 in June 1983 and in Unit 2 in August 1984. They are environmentally qualified replacements for nearly identical valves which used Buna N as the elastomer. These valves utilize

ethylene propylene (EP) in place of the Buna N. The EP material is rated for higher temperature use and has much higher radiation resistance than Buna N.

Because EP is resistant to high levels of radiation, it is the material of choice for environmentally qualified (EQ) applications. However, EP absorbs hydrocarbons and, like a sponge, softens and swells up. Laboratory analysis of the three subject solenoid valves showed a significant amount of hydrocarbons in the valve body of the F028C solenoid valve. The precise hydrocarbon has not yet been identified.

Cause or Causes—The precise failure mechanism of the elastomer material has not yet been identified; however, it is believed that temperature, contamination, and internal geometry played a part in the failure mechanism. Temperature alone can reproduce the failure mechanism but not at a temperature that is reasonably expected to occur in the plant. The physical evidence showed signs of swelling of the EP, which is known to occur when it is exposed to hydrocarbons. The geometry is such that the EP can swell and fill the exhaust port, thus blocking that path and providing a frictional force in opposition to the valve opening force. In addition, exposure to hydrocarbons may cause the elastomer in EP to vaporize at a lower temperature. Valves that are not subjected to the same conditions of temperature, contamination, and internal geometry are not expected to experience this failure.

Actions Taken to Prevent Recurrence

Licensee—The Unit 2 MSIV solenoid valves have been replaced with valves utilizing viton as the elastomer. The valves on Unit 1 were replaced during the ongoing 1985 Unit 1 refueling/maintenance outage by valves utilizing viton. Viton is impervious to the hydrocarbon contamination and licensee tests have shown that it can withstand temperatures that will degrade EP. While the geometry of the viton valves is the same as the EP, reduction of two of the three effects (i.e., temperature, contamination, and geometry) provides an increased degree of confidence that the viton valves will not fail in this mode. Viton, however, is less resistant to radiation than EP by a factor of ten; therefore, the material needs replacing more frequently.

During the next scheduled outage of sufficient length following six months of operation for either unit, a sampling of the MSIV double solenoid valves will be replaced. The removed solenoids will be evaluated as part of the continuing failure analysis of the ASCO solenoids. It is expected the solenoid valves will be replaced at approximately three-year intervals due to the radiation susceptibility of viton.

NRC—A detailed inspection to review the licensee actions with respect to the solenoid failures was conducted by NRC Region II. Inspectors from NRC Region II and NRC headquarters reviewed test results at both the site and the utility's research facility. An Inspection and Enforcement Information Notice regarding this event is under consideration.

Management Deficiencies at Fermi Nuclear Power Station

One of the abnormal occurrence examples notes that serious deficiencies in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On December 24, 1985, NRC Region III issued a letter under 10 CFR 50.54(f) seeking information from Detroit Edison Company on plans to improve the regulatory performance of its Fermi Unit 2 Nuclear Power Station. The letter identified a series of operational and equipment problems occurring at Fermi Unit 2 and attributed them to ineffective management systems. The plant, which utilizes a General Electric-designed boiling water reactor, is located in Monroe County, Michigan.

Nature and Probable Consequences—In July 1985 the licensee began to experience a series of operational problems, some of which were the result of personnel errors.

On July 1, 1985, during startup of the reactor, a reactor operator failed to follow the procedure for withdrawing control rods from the reactor core. The operator withdrew 11 rods to their fully withdrawn position (position 48) instead of to the next intermediate position (position 04). As a result the reactor went critical (i.e., a sustained nuclear chain reaction was started) earlier in the startup procedures than planned.

When instrumentation indicated unexpected conditions in the reactor, the operator reinserted the control rods to stop the chain reaction. Later, the startup was resumed and criticality occurred at the expected point. Later analysis showed that the reactor had gone critical when the 11 rods were withdrawn.

The NRC's inspection and review of this premature criticality event identified nine apparent violations of NRC requirements associated with it. Because the plant had just achieved its initial criticality on June 21, 1985, and therefore had little residual radioactivity in the reactor core, this event was of minimal safety consequences. No damage to the fuel would be expected under these circumstances.

Subsequently, additional problems occurred at the plant, some of which were caused by personnel errors while others were strictly equipment failures. These problems included:

1. The South Reactor Feedwater Pump turbine was damaged during testing on July 22, 1985. The pump turbine had a history of excessive vibration during preoperational testing. The second feedwater pump was not affected by the vibration problem. Operation at power levels up to 50 percent is possible with only one feedwater pump in operation.

2. On July 26, 1985, while a diesel generator was undergoing testing, a low flow of cooling water for the diesel was observed. The diesel was shut off, and the licensee's subsequent investigation determined that a cooling tower bypass valve was closed. This valuve is required to be open for the flow of cooling water to the diesel generator and to other safety system equipment in Division 1, including the core spray system and the residual heat removal system.

The licensee determined that the valve had been left in the closed position while running the Reactor Heat Removal Service Water System on July 23, 1985. The plant is required to have both Divisions of its emergency core cooling system operable, while the plant is in startup or operating status. The plant was in a startup mode when the valve was closed, but shut down later because of the previously reported feedwater pump turbine problem. (The shutdown fortuitously avoided further violation of the plant Technical Specification requirement that the plant be placed in cold shutdown if one ECCS division is inoperable.)

3. On September 2, 1985, the licensee discovered that a Containment Monitoring System Valve was open and uncapped, thus providing a breach of the primary reactor containment. The valve was left open following installation of the valve in June 1985. (This event was described in Appendix C, "Other Events of Interest," in the Abnormal Occurrence Report to Congress for the Third Quarter 1985, i.e., NUREG–0090, Vol. 8, No. 3.)

4. Since receiving an operating license in March 1985, Fermi Unit 2 has experienced numerous personnel errors. Of 78 Licensee Event Reports submitted by the licensee between March and November 1985, 41 involved personnel errors.

5. NRC inspectors, in an inspection report covering the events listed above as well as other problems at the Fermi

Unit 2 facility, identified 26 items of apparent violation of NRC requirements. Enforcement action on these items is pending.

The unit was shut down on October 10, 1985, for the installation of a remote shutdown control panel to meet an NRC requirement for the capability of shutting the plant down safely from a point outside the main control room.

During the outage, significant problems were encountered with the facility's emergency diesel generators. During testing of the No. 13 diesel generator in November 1985, excessive noise and vibration were detected. The diesel generator was shut down, and an examination showed evidence of bearing damage. Subsequent inspections of two additional diesel generators (the site has a total of four) showed similar damage. The plant had previously encountered bearing problems with two diesel generators in January 1985 and the equipment was repaired.

The licensee and the diesel vendor, Fairbanks Morse, believe the damage is attributable to an insufficient break-in period. Further testing of the diesels is underway, and the root cause of the bearing problems remains under review by the licensee, its consultants, and the NRC.

Cause or Causes—The principal cause is attributed to ineffective management systems as reflected in a series of operational and equipment problems, and numerous personnel errors and violations of technical requirements.

Actions Taken to Prevent Recurrence

Licensee—The licensee has instituted various measures to improve its regulatory performance, including retraining of personnel and revision of procedures. An independent overview committee of consultants has been formed by the licensee to review the management and operation of the Fermi facility.

NRC—Following the July 1, 1985, premature critically incident, NRC Region III issued a Confirmatory Action Letter on July 16, 1985, to Detroit Edison, confirming the licensee's agreement not to operate the unit above five percent power until the premature criticality incident was fully analyzed and corrective action taken. Operation above five percent power would not occur without authorization from NRC Region III. That restriction was not lifted prior to the October 10, 1985, outage.

The December 24, 1985, request for information under 10 CFR 50.54(f) sought the licensee's response on the adequacy of management and management structures, on changes in controls needed to improve regulatory performance, and on actions planned to ensure readiness of the facility to resume operations and testing activities.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

Diagnostic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On August 14, 1985, a patient at the Letterman Army Medical Center, Presidio of San Francisco, California, was inadvertently given the wrong radiopharmaceutical for a scheduled thyroid uptake study and scan. This resulted in an administered dose which exceeded the prescribed dose by approximately a factor of 30.

Nature and Probable Consequences—The attending physician mistakenly prescribed a dose of 150 microcuries of I–131 instead of I–123. The radiopharmacy misinterpreted the prescribed dose as 5 millicuries of I–131. The 5 millicuries of I–131 were administered to the patient on August 14, 1985. The mistake was identified on August 16, 1985, when the patient returned to the hospital for the uptake study and scan.

The level of radiopharmaceutical administered is commonly given to patients for certain other diagnostic procedures, and, despite the mistake, the diagnostic scan and uptake desired for this patient were able to be accomplished without administration of any additional radiation beyond the initial dose. Also, the patient had previously undergone a partial thyroidectomy and was taking thyroid hormones for thyroid gland suppression. The licensee states that, because of these circumstances, no adverse clinical symptoms were expected as a result of the misadministration.

The patient and the attending physicians were notified of the misadministration and the licensee began an immediate investigation to determine what factors and circumstances may have contributed to the incident.

Cause or Causes—The misadministration was caused when the attending physician prescribed the wrong radiopharmaceutical which was further misinterpreted by the radiopharmacy as a request for 5 millicuries of I–131.

Actions Taken to Prevent Recurrence

Licensee—Effective August 16, 1985, the licensee instituted a new hospital procedure which would require that only the nuclear medicine staff would administer radiopharmaceuticals and the radiopharmacist must authorize the release of radiopharmaceuticals from the pharmacy. All prescriptions will be in writing.

NRC—The circumstances of the misadministration were discussed with the licensee. The licensee's corrective actions were determined to be acceptable. The NRC does not plan any further actions.

Therapeutic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On October 9, 1985, at the Queen's Medical Center, Honolulu, Hawaii, a patient was to receive 1000 rads to the lateral limbal area of the right eye using a Sr–90 applicator; however, the medial limbal area of the right eye was treated.

Nature and Probable Consequences—The attending physician realized the error when the patient returned for his second treatment on October 16, 1985. The patient and referring physician were informed of the error immediately. According to the attending physicians, there are no complications to be anticipated due to the incorrect treatment.

Cause or Causes—The misadministration was caused when the attending physician misinterpreted an area containing scar tissue in the medial limbal area of the right eye as the area to be treated. There were no written treatment instructions for the attending physician.

Actions Taken to Prevent Recurrence

Licensee—Effective November 20, 1985, the hospital has made it mandatory that a written requisition must be submitted by the referring physician prior to treatment. This requisition must include the patient's name and a description of the intended treatment area clearly identified. The physician must then sign and date the requisition. This requisition shall be kept in the patient's chart along with the treatment summary.

NRC—The circumstances of the misadministration were reviewed during a visit to the hospital on December 19, 1985, by members of the NRC Region V management staff. The licensee's corrective actions were determined to be acceptable. The NRC does not plan any further actions.

Diagnostic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On December 9, 1985, a patient at Hospital Universitario, San Juan, Puerto Rico, received 4.98 millicuries of iodine–131 instead of a 10 to 15 microcuries dose usually given for a 24-hour thyroid uptake test.

Nature and Probable Consequences—The patient arrived at the hospital's Nuclear Medicine Division on December 9, 1985, to receive iodine–131 for a 24-hour thyroid test. The test was part of the physician's plan to evaluate the patient for hyperthyroidism. The usual dose for such a diagnostic procedure at the Nuclear Medicine Division is 10 to 15 microcuries. Instead, the technologist mistakenly administered a dose of 4.98 millicuries which is the dose usually given for whole body scans with iodine–131.

The patient's referring physician was notified of the misadministration. Based on statements from the physician, the patient was a likely candidate for iodine–131 therapy for treatment of the hyperthyroid condition; therefore, the probable consequences for the patient would be consistent with the projected medical treatment.

Cause or Causes—As discussed above, the reason for the misadministration was due to an error by the technologist.

Actions Taken to Prevent Recurrence

Licensee—Review with the nuclear medicine staff the protocol used for hyperthyroid patients dosed with radioiodine.

NRC—The incident and the licensee's protocol will be reviewed during the next NRC routine inspection.

Dated in Washington, DC, this 20th day of May 1986.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–11686 Filed 5–22–86; 8:45 am]

BILLING CODE 7590–01–M

Public Service Company of New Hampshire, et al.; Receipt of Additional Antitrust Information; Time for Submission of Views on Antitrust Matters

Public Service Company of New Hampshire, *et al.*, pursuant to section 105 of the Atomic Energy Act, as amended, has filed information requested by the Attorney General for antitrust review as required by 10 CFR Part 50, Appendix L. This information concerns a proposed new owner, EUA Power Corporation (EUA Power), in the Seabrook Station, Units 1 and 2 located in Rockingham County, New Hampshire. The filing is precipitated by the proposed transfer of ownership shares of the Seabrook Station to EUA Power presently held by the following owners: Central Vermont Public Service Corporation; Central Maine Power Company; Bangor Hydro-Electric Company; and the Maine Public Service Corporation.

The Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicants' Environmental Report; Time for Submission of Views on Antitrust Matters was published in the **Federal Register** on August 9, 1973 (38 FR 21522). The Notice of Receipt of Facility Operating Licenses was published in the **Federal Register** on October 19, 1981 (46 FR 51330).

Copies of the instant filing and the documents listed above are available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Exeter Public Library, Front Street, Exeter, New Hampshire 03883.

Any person who wishes to have views on antitrust matters with respect to the EUA Power Corporation presented to the Attorney General for consideration or who desires additional information regarding the matters covered by this notice, should submit such views or requests for additional information to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation, on or before July 22, 1986.

Dated at Bethesda, Maryland, this 20th day of May, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 85–11652 Filed 5–22–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Proposed Guidance on the Privacy Act Implications of "Call Detail" Programs to Manage Employees' Use of the Government's Telecommunications Systems

AGENCY: Office of Management and Budget.

ACTION: Notice and request for public comment on Proposed Guidance implementing the Privacy Act of 1974.

SUMMARY: Pursuant to its responsibilities in section 6 of the Privacy Act of 1974 (Pub. L. 93–579), OMB has developed proposed guidance on how the recordkeeping provisions of that Act affect agencies' programs (so-called "call detail programs") to collect and use information relating to their employees' use of long distance telephone systems. This proposal:

- Describes the purposes of call detail programs and explains how they work.
- Notes that call detail records that contain only telephone numbers are not Privacy Act records, but that when linked with a name, they become Privacy Act records.
- Notes that when agencies start retrieving by reference to a linked number or name, they are operating a system of records.
- Urges agencies not to create artificial filing and retrieval schemes to avoid the Act.
- Suggests agencies establish an agency-wide system in which to maintain these records, and provides a model notice for them to use.
- Discusses the disclosure provisions of the Act as they would pertain to such a call detail system, especially emphasizing that intra-agency disclosures for improper employee surveillance purposes or to identify and harass whistleblowers are not sanctioned under section (b)(1).

Interested parties are invited to provide comments on this proposal.

DATE: Comments must be received before June 30, 1986.

ADDRESS: Send comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Information Policy Branch, OIRA, 202–395–4814.

Proposed Guidance:

1. *Purpose.*

This guidance is being offered in conjunction with guidance on call detailing published by the General Services Administration. Whereas GSA's guidance focuses on how to create and operate such programs, this document explains the ways in which the Privacy Act of 1974 affects any records generated during the course of call detail programs.

Nothing in this guidance should be construed to (a) authorize activities that are not permitted by law; or (b) prohibit

activities expressly required to be performed by law. Complying with these Guidelines, moreover, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited herein.

2. *Scope.*

These Guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a).

3. *Effective Date.*

These Guidelines are effective on the date of their issuance.

4. *Definitions.*

For the purposes of these Guidelines:

• All the terms defined in the Privacy Act of 1974 apply.

• "Call detail report"—This is the initial report of long-distance calls made during a specified period. A call detail report may be provided by a telephone company, the General Services Administration, or it may originate from a PBX (Private Branch Exchange) on an agency's premises. *No monitoring of conversations takes place during the collection of data for this report.* The report may contain such technical information as the originating number, destination number, destination city and State, date and time of day a call was made, the duration of the call, and cost of the call if made on commercial lines. At this stage, a call detail report contains no information directly identifying the individuals making or receiving calls.

• "Call Detail Information" or "Call Detail Records." These are records generated from call detail reports through administrative, technical or investigative follow-up. In some cases call detail information or records will contain *no* individually identifiable information and there for no Privacy Act considerations will apply. In other cases, the information and records will be linked with individuals and the Privacy Act must be taken into consideration.

5. *Background.*

Rapid growth in automated data processing and telecommunications technologies has created new and special problems relating to the Federal Government's creation and maintenance of information about individuals. At times, the capabilities of these technologies have appeared to run ahead of statutes designed to manage this kind of information, particularly the Privacy Act. An example is the establishment of *call detail* programs to help agencies control the costs of operating their long distance telephone systems. Call detail programs develop information about how an agency's telecommunications system is being used. The information may come from a number of sources, e.g., from agency installed or utilized devices to record usage information (pen registers or agency switching equipment); from central agency managers such as the General Services Administration or the Defense Communications Agency; or directly from the providers of telecommunications services.

There are many different purposes for call detail programs. Agency managers may use call detail information to help them choose more efficient and cost-effective ways of communicating. The information may be used to make decisions about acquiring hardware, software, or services, and to develop management strategies for using existing telecommunications capacity more efficiently. One aspect of this latter use may be the development of programs to identify unofficial use of the agency's telephone system. To this end, call detail programs work by collecting information about the use of agency telephone systems and then attempting to assign responsibility for particular calls to individual employees. Their two-fold purpose is to deter use of the system for unofficial purposes and to recoup for the government the cost of unofficial calls.

Soon, the establishment of call detail programs will become a government-wide priority as part of a management initiative on reducing the government's administrative costs.

6. *Privacy Act Implications.*

a. *Call Detail Records as Privacy Act Records.*

The Privacy Act of 1974 is the primary statute controlling the government's use of information about individuals. Not all individually identifiable information, however, qualifies for the Act's protections. With but few exceptions, only information that consists of "records" as defined by the Act, and which is maintained by an agency in a "system of records," triggers the Act's provisions. The Privacy Act defines a "record" as "* * * any item, collection or grouping of information about an individual that is maintained by an agency including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph * * *."

A "system or records" is—a group of any such records from which information is retrieved by the name of the individual or other identifying particular.

As we have indicated in our original Privacy Act implementing Guidelines (40 FR 28949, July 9, 1975), the mere capability of retrieving records by an identifying particular is not enough to create a system of records; *the agency must actually be doing so.*

The threshold question for call detail information, then, is whether a telephone number is a record within the meaning of the Privacy Act. The answer to this question depends upon how the telephone number is maintained.

Standing alone, a telephone number, is *not* a Privacy Act record. To achieve the status of a Privacy Act record, a telephone number must be maintained in a way that links it to an individual's name or some other identifying particular such as a Social Security Account Number.

When an agency assigns a specific phone number to an employee and maintains that information in a way that the name and number are inseparably connected, there is sufficient identification linkage that a Privacy Act record is created. (It should be noted that the Privacy Act does not require that the record be unique to the individual, only that it be "about" him or her and include his or her name or other indentifying particular. Thus, a telephone number could be shared by several individuals and still meet the Privacy Act "record" definition).

The initial call detail reports which contain only technical information about telephone usage do not consist of records within the meaning of the Privacy Act and they will therefore never reach the level of a system of records. For many areas of telecommunications management, the information in call detail reports will never become systems of records and the Privacy Act will have no application.

When, however, call detail records are used in management programs designed to control costs and determine *individual* accountability for telephone calls, Privacy Act considerations must be addressed. In order to carry out these kinds of call detail programs, agencies will have to link numbers and names so that they can determine who is responsible for what call. It is at this point, that the telephone number meets the Privacy Act definition of a "record."

b. *Call Detail Records in Privacy Act Systems of Records.*

The next question, then, is when do files consisting of Privacy Act records created by linking a telephone number and an individual's name become a system of records? This occurs when agencies use the Privacy Act record as a

key to retrieve information from these files.

While it is important to remember that not every data base containing call detail records will be a Privacy Act system of records, agencies are cautioned against creating artificial filing schemes merely to avoid the effect of the Act when the establishment of a system of records would be appropriate. Since these records are clearly intended to establish *individual* responsibility for long distance telephone use, their use by the agency could have serious financial or disciplinary consequences for individual employees. By maintaining these records in conformance with the provisions of the Privacy Act, agencies can make certain that legitimate concerns about the implementation of call detail programs (e.g., improper use of the records for surveillance or employee harassment, unfairness, and record accuracy) are dealt with in a procedural framework that was designed to deal with such concerns.

Therefore, we recommend strongly that agencies create an agency-wide Privacy Act system of records in which to maintain call detail records that contain information about individuals and are used to determine accountability for telephone usage.

Such a system might contain the following kinds of records:

- The initial call detail monthly listing (in whatever form it is kept, e.g., on paper, magnetic tape or diskettes);
- Locator information showing where in the agency specific telephones are located;
- Records relating to the identification of individual employees, and (1) linking them with specific calling numbers; (2) linking them with specific called numbers.

Notes that not all Privacy Act records generated as a result of call detail programs would become a part of *this* system of records. Thus, investigative records of the Office of the Inspector General, personnel records reflecting administrative or disciplinary actions, finance and accounting records relating to cost attribution and recoveries, and the like, that are generated from call detail programs might be filed in appropriate existing systems and subjected to their particular disclosure/safeguarding provisions. In other instances, records (name and telephone number, for example) may be common to the call detail system and other systems.

To help the agencies in its construction, we offer a model system notice in Appendix I.

c. *Disclosing from Call Detail Records Systems under Section (b) of the Privacy Act.*

The Privacy Act provides 12 exceptions to its basic requirement that agencies must obtain the written consent of the record subject before disclosing information from a system of records. The following exceptions are the ones most relevant to the proposed Call Detail system of records:

- Section (b)(1). "To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." This exception does not contemplate unrestricted disclosures within the agency. Intra-agency disclosure of call detail records may be made *only when there is an official need to know the information.* The following are examples of disclosures that (b)(1) would permit:

—To individual supervisors to determine responsibility for specific telephone calls.

—To employees of the agency to review the call detail lists and identify calls made by the employee. Note that the other option for this kind of disclosure is a routine use (Section (b)(3)). Agencies that are concerned about establishing that employee A has an official need to know about the calls made from employee B's telephone may wish to adopt a routine use authorizing the disclosures.

—To the employees of the Office of the Inspector General who are conducting investigations into abuse of the FTS system;

—To employees of the Office of Finance and Accounting for processing of reimbursements for personal calls or for processing of administrative offsets of pay pursuant to the provisions of the Debt Collection Act;

—To Freedom of Information Act Officers and legal advisers.

Some examples of disclosures that (b)(1) would *not* authorize are:

—To agency personnel to identify and harass whistleblowers;

—To agency personnel who are merely curious to know who is calling whom.

- Section (b)(2). "Required under Section 552 of this title." Information may be disclosed both inside and outside the agency to the extent that the disclosure would be *required* by the Freedom of Information Act. Prior to the ruling of the Court of Appeals for the D.C. Circuit in *Bartel v. FAA*, 725 F.2d 1403 (D.C. Cir. 1984), longstanding agency practices and OMB interpretation treated this section as permitting agencies to *initiate* disclosure of material that they would be "required" to release under the FOIA. Disclosure under this interpretation did not depend on the existence of a FOIA request for the records; the mere finding that no FOIA exemption could apply and that the agency would therefore have no choice but to disclose, was sufficient. In fact, agencies relied upon this interpretation of the requirements of section (b)(2) to make routine disclosures of many documents, especially those traditionally thought to be in the public domain such as press releases, final orders, telephone books, and the like.

In *Bartel*, however, the court held that an agency must have received an actual FOIA request before disclosing pursuant to section (b)(2). In that case, the plaintiff, Bartel, brought a Privacy Act action asserting that his supervisor had gratuitously disclosed to three former colleagues the fact that Bartel had improperly obtained copies of their personnel records. The court interpreted the standard for (b)(2) disclosures to other than a conditional one, i.e., not merely that the agency *would* have to disclose *if* such a request were received, but that the agency must have to do so because an actual FOIA request for the records *has been* made. Under this ruling, agency-initiated requests of FOIA releasable material would be improper.

The court noted, however, that material traditionally held to be in the public domain might constitute an exception to its FOIA-request-in-hand interpretation. In guidance issued in May of 1985 (Memorandum from Robert P. Bedell to Senior Agency Officials for Information Resources Management, Subject: Privacy Act Guidance—Update, dated May 24, 1985) OMB suggested (without agreeing with the ruling) that agencies continue to make disclosure of these kinds of records without having received a FOIA request. We cautioned, however, that agencies should be careful about making gratuitous releases of sensitive classes of Privacy Act records without having received a request for them.

Applying the *Bartel* ruling to call detail information, there appear to be three distinct categories of records which could be considered for release under section (b)(2):

—Records which clearly fall into the "public domain" category. We suggest that these would be releasable either at the agency's initiation or in response to a FOIA request: The former because they are of the "traditionally released" class; the latter, because no FOIA exemption would prevent their disclosure. An example would be the names and

office telephone numbers of agency employees. These are generally considered public information (obviously there may be exceptions for investigative and intelligence organizations), and the only applicable FOIA exemption, (b)(6), the personal privacy exemption, would not apply. Thus, disclosures of an employee's name and office telephone number would be appropriate under Privacy Act section (b)(2).

—Records which could be withheld under an applicable FOIA exemption and which, therefore, would not be required to be released. These could be, for example, records which contain sensitive information relating to ongoing investigative or personnel matters such as records relating to the investigation of an employee for abuse of the agency's long distance telephone system. Such records could reasonably be withheld under FOIA exemption (b)(6) and, therefore, would not be releasable under section (b)(2) of the Privacy Act. An agency would not release these kinds of records either at its own initiative or in response to a FOIA request. It should be noted, however, that such records might be released under other sections of the Act, such as (b)(3), "for a routine use," or (b)(7) at the request of the head of an agency for an authorized civil or criminal law enforcement activity.

—Records for which no FOIA exemption applies but which contain sensitive information, e.g., records which reflect the results of official actions taken as a consequence of investigations of abuses of the telephone system. We suggest that agencies should be very cautious about initiating disclosure of these records without receiving a FOIA request since they appear to be of the category of records that concerned the *Bartel* court. Even with a request, agencies will have to determine that the interest of the public in having the record clearly outweighs the privacy interest of the record subject in order to overcome the applicability of FOIA exemption (b)(6).

• Section (b)(3). "For a routine use." See the routine use section of the model system notice at Appendix I. A routine use is a disclosure of information that will be used for a purpose that is compatible with the purpose for which the information was originally collected.

The concept of compatibility comprises both *functionally equivalent uses:*

—For example, routine use (5) in the model notice would authorize disclosure to the Department of Justice to prosecute an egregious abuser of an agency's long distance telecommunications system. This disclosure is functionally compatible since one of the purposes of the system is to identify abusers and subject them to administrative or legal consequences.

as well as other *uses that are necessary and proper:*

—For example, routine use (2) in the model notice authorizes disclosure to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections pursuant to a specific statutory charter. Their purpose is in no way functionally equivalent to the purpose for which the system was established; it is, however, clearly necessary and proper.

• Section (b)(12). "To a consumer reporting agency." This disclosure exception was added to the origiunal 11 by the Debt Collection Act of 1982. It authorizes agencies to disclose bad debt information to credit bureaus. Before doing so, however, agencies must complete a series of due process steps designed to validate the debt and to offer the individual the chance to repay it (see OMB Guidelines on the Debt Collection Act, published in the **Federal Register** on April 11, 1983 (48 FR 15556). It is possible that agencies will wish to disclose information from call detail systems of records documenting an individual's responsibility for unofficial long distance calls as part of the bad debt disclosure. For this reason, the model system notice at Appendix I contains a statement identifying the system as one from which such disclosures can be made.

7. *Contact Point for Guidance.*

Refer any questions about this guidance to Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, 395–4814.

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

Appendix I—Proposed Model System Notice for Call Detail Records

This is a proposed notice; agencies should modify it as appropriate.

System Name:

Call Detail Records.

System Location:

Records are stored at (name of Headquarters Office containing central files) and at (insert component locations).

Categories of Individuals Covered by the System:

Agency employees who make long distance calls and individuals who received telephone calls placed from agency telephones.

Categories of Records in the System:

Records relating to use of the agency telephones to place long distance calls, records indicating assignment of telephone numbers to employees; records relating to location of telephones.

Authority for Maintenance of the System:

(Cite appropriate agency "housekeeping" statute authorizing the agency head to create, collect and keep such records as are necessary to manage the agency).

Routine Uses of Records Maintained in the System:

Records and data may be disclosed, as is necessary, (1) to Members of Congress to respond to inquiries made on behalf of individual constituents that are record subjects; (2) to representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (3) in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding; (4) in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding; (5) to an appropriate Federal, State or local law enforcement agency responsible for investigating, prosecuting, or defending an action where there is an indication of actual or potential violation of any government action; (6) to employees of the agency to determine their individual responsibility for telephone calls, but only to the extent that such disclosures consist of comprehensive lists of called and calling numbers; (7) to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter. (Agencies should refrain from

automatically applying all of their blanket routine uses to this system).

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in System:

Storage:

(Describe agency methods of storage).

Retrievability:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

Safeguards:

(Describe methods for safeguarding).

Retention and Disposal:

Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

System Manager(s) and Address(es):

(List central system manager and component subsystem managers, if appropriate).

Notification Procedures:

(Explain notification procedures).

Record Access Procedures:

(Explain how individuals may obtain access to their records).

Record Source Categories:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

Systems Exempted from Certain Provisions of the Act: None.

[FR Doc. 86-11633 Filed 5-22-86; 8:45 am]
BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedules A, B, and C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 623-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on May 2, 1986 (51 FR 16412). Individual authorities established or revoked under Schedule A, B or C between April 1, 1986, and April 30, 1986, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established during April. However, the following exceptions are revoked:

Department of State

Schedule A excepted appointing authority for part-time or intermittent gauge readers employed by the International Boundary and Water Commission, United States and Mexico, was revoked because it is no longer used. Effective April 16, 1986.

General Services Administration

The Schedule A excepted appointing authority for custodians, guards, and related employees engaged in the custody and preservation of surplus facilities pending their disposal was revoked because it is no longer used. Effective April 8, 1986.

Schedule B

The following exception is established:

Department of Treasury

Not to exceed 10 positions engaged in functions mandated by Public Law 99-190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contracts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years. Effective April 9, 1986.

Schedule C

The following exceptions are established:

Department of Agriculture

One Staff Assistant to the Secretary. Effective April 4, 1986.

One Confidential Assistant to the Secretary. Effective April 4, 1986.

One Confidential Assistant to the Secretary. Effective April 30, 1986.

Department of Commerce

One Confidential Assistant to the Director, Minority Business Development Agency. Effective April 4, 1986.

One Confidential Assistant to the Deputy Assistant Secretary, Import Administration, International Trade Administration. Effective April 17, 1986.

One Special Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration. Effective April 18, 1986.

One Confidential Assistant to the Deputy Assistant Secretary for Science and Electronics, International Trade Administration. Effective April 21, 1986.

One Confidential Assistant to the Special Assistant to the Deputy Secretary. Effective April 25, 1986.

One Associate Director to the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration. Effective April 29, 1986.

Department of Defense

One Special Assistant to the Ambassador and Political/Military Counselor. Effective April 30, 1986.

Department of Education

One Confidential Assistant to the Under Secretary. Effective April 2, 1986.

One Special Assistant to the Secretary's Regional Representative. Effective April 14, 1986.

One Special Assistant to the Assistant Secretary for Legislation. Effective April 17, 1986.

One Confidential Assistant to the Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective April 23, 1986.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective April 28, 1986.

Department of Energy

One Research Assistant to the Special Assistant to the Secretary. Effective April 3, 1986.

One Private Secretary to a Member of the Federal Energy Regulatory Commission. Effective April 15, 1986.

One Staff Assistant to the Director of Communications, Office of Congressional, Intergovernmental and Public Affairs. Effective April 23, 1986.

One Confidential Assistant to the Under Secretary. Effective April 30, 1986.

Department of Health and Human Services.

One Special Assistant to the Director, Office of Policy and Legislation, Office of Human Development Services. Effective April 9, 1986.

One Special Assistant to the Commissioner, Administration on Developmental Disabilities. Effective April 11, 1986.

One Special Assistant to the Secretary. Effective April 23, 1986.

One Confidential Staff Assistant to the Secretary. Effective April 23, 1986.

One Confidential Assistant to the Secretary. Effective April 23, 1986.

One Steward to the Secretary. Effective April 23, 1986.

One Special Assistant/Advisory Committee Officer to the Under Secretary. Effective April 24, 1986.

One Special Assistant for Liaison to the Deputy Commissioner, Food and Drug Administration. Effective April 25, 1986.

Department of Housing and Urban Development

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs, Office of Housing. Effective April 4, 1986.

One Special Assistant to the Deputy Assistant Secretary for Single Family Housing. Effective April 7, 1986.

Four Special Assistants to the Secretary. Effective April 16, 1986.

One Special Assistant to the Regional Administrator. Effective April 18, 1986.

Department of Interior

One Special Assistant to the Director, National Park Service. Effective April 1, 1986.

One Director of Congressional and Legislative Affairs to the Commissioner, Bureau of Reclamation. Effective April 1, 1986.

One Staff Assistant to the Director, Office of External Affairs, Bureau of Land Management. Effective April 2, 1986.

One Assistant to the Director Office of External Affairs, Bureau of Land Management. Effective April 2, 1986.

One Supervisory Public Affairs Specialist to the Director, Office of External Affairs, Bureau of Land Management. Effective April 4, 1986.

One Congressional Affairs Officer to the Director, Office of External Affairs, Bureau of Land Management. Effective April 4, 1986.

One Special Assistant to the Commissioner, Bureau of Reclamation. Effective April 23, 1986.

One Executive Assistant to the Commissioner, Bureau of Reclamation. Effective April 23, 1986.

Department of Justice

One Special Assistant to the Director, National Institute of Justice. Effective April 8, 1986.

One Congressional and Public Liaison Officer to the Deputy Assistant Attorney General, Office of Justice Programs. Effective April 9, 1986.

One Confidenial Assistant to the Assistant Attorney General, Office of Legal Policy. Effective April 28, 1986.

One Special Assistant to the Attorney General. Effective April 28, 1986.

Department of Labor

One Special Assistant to the Deputy Under Secretary, Public and Intergovernmental Affairs. Effective April 1, 1986.

One Special Assistant to the Director, Office of Federal Contract Compliance Programs. Effective April 1, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective April 9, 1986.

One Special Assistant to the Director, Women's Bureau. Effective April 15, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective April 15, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective April 18, 1986.

One Regional Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective April 28, 1986.

Department of State

One Secretary (Stenography) to the Director, Bureau of Politico-Military Affairs. Effective April 11, 1986.

Department of Transportation

One Staff Assistant to the Associate Deputy Secretary. Effective April 8, 1986.

One Special Assistant to the Director of External Affairs, Maritime Administration. Effective April 21, 1986.

Department of Treasury

One Confidential Assistant to the Assistant Secretary for Legislative Affairs. Effective April 11, 1986.

One Special Assistant to the Deputy Assistant Secretary for Administration. Effective April 16, 1986.

One Special Assistant to the Assistant Secretary for Legislative Affairs. Effective April 25, 1986.

ACTION

One Confidential Assistant to the Deputy Director. Effective April 28, 1986.

Agency for International Development

One Program Operations Assistant to the Director, Office of Private and Voluntary Cooperation. Effective April 21, 1986.

One Special Assistant to the Director, Office of Private and Voluntary Cooperation. Effective April 29, 1986.

U.S. Arms Control and Disarmament Agency

One Secretary (Typing) to the Assistant Director, Strategic Programs Bureau. Effective April 4, 1986.

One Special Assistant to the Director. Effective April 4, 1986.

Commission on Civil Rights

One Special Assistant to the Staff Director. Effective April 1, 1986.

One Supervisory Public Affairs Specialist to the Staff Director. Effective April 3, 1986.

Equal Employment Opportunity Commission

One Media Contact Specialist (Bilingual) to the Director of Communications. Effective April 9, 1986.

One Media Contact Specialist to the Director of Communications. Effective April 28, 1986.

Federal Mine Safety & Health Review Commission

One Confidential Secretary to a Commissioner. Effective April 4, 1986.

General Services Administration

One Confidential Assistant to the Associate Administrator for Congressional Affairs. Effective April 15, 1986.

One Executive Assistant to the Associate Administrator for Operations. Effective April 15, 1986.

One Confidential Assistant to the Regional Administrator. Effective April 15, 1986.

One Confidential Assistant to the Commissioner, Public Buildings Service. Effective April 18, 1986.

Office of Management and Budget

One Confidential Assistant to the Director. Effective April 7, 1986.

Office of Personnel Management

One Staff Assistant to the Assistant Director for Executive Administration. Effective April 25, 1986.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective April 7, 1986.

One Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective April 25, 1986.

United States Information Agency

One Special Assistant to the Associate Director for Programs. Effective April 4, 1986.

One Program Assistant to the Coordinator, President's U.S.-Soviet Exchange Initiative. Effective April 14, 1986.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-11730 Filed 5-22-86; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Proposed Procedure for Responding to Petitions for Rulemaking To Revise Power Plan

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Proposed policy and opportunity to comment.

SUMMARY: The Northwest Power Planning Council propose the following procedures for responding to petitions for rulemaking to revise the Northwest Conservation and Electric Power Plan.

DATES: Comments must be submitted on or before June 6, 1986.

ADDRESS: Send comments to Janet C. Hanson, Associate Counsel, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Copies of this notice and the final procedures may be obtained by contacting Dulcy Mahar, Director of Public Information and Involvement at Northwest Power Planning Council, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205, or at (503) 222-5161, or (toll-free) 1-800-222-3355 (in Montana, Idaho or Washington) or 1-800-452-2324 in Oregon.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Procedures Act (APA), 5 U.S.C. 553(e), requires administrative agencies to give interested persons the right to petition for the issuance, amendment or repeal of an administrative rule. The Council is at this time considering adoption of a formal policy for responding to petitions to enter rulemaking to revise the Northwest Conservation and Electric Power Plan (Power Plan).

Although the APA requires that persons be given the right to petition for rulemaking, it does not prescribe any particular procedures to be followed in this process. This policy has been drafted based upon procedures for petitions for rulemaking used by other agencies.

This process will no doubt become increasingly important if the Council schedules less frequent major revisions to the Power Plan, which, pursuant to section 4(d)(1) of the Northwest Power Act, 16 U.S.C. 839(d)(1), is an administrative rule. If, for example, the Council decides to make major revisions as infrequently as every five years (the statutory maximum for review of the Plan), it may be increasingly necessary to have in place a procedure for responding to requests during the interim period to re-examine parts of the Power Plan. A procedure for handling petitions for rulemaking would clarify the process for interested persons to request the Council to review additional data and other information as it becomes available.

It is proposed that any recommendation or petition to amend the Council's Columbia River Basin Fish and Wildlife Program will continue to be handled separately under section 4(h) of the Northwest Power Act, 16 U.S.C. 839b(h), and sections 1400-1404 of the Fish and Wildlife Program. According to these sections, prior to a major revision of the Power Plan, the Council must request recommendations for amendment of the Fish and Wildlife Program. The Council also may consider applications for amendment to the Fish and Wildlife Program which are submitted at other times, as well as considering Fish and Wildlife Program amendments on its own motion. The Council will consider modifying the procedures contained in sections 1400-1404 of the Program if it determines that any of those procedures are incompatible with this policy or otherwise require improvement or clarification. The Council requests comment on this proposed treatment of Fish and Wildlife Program amendments and welcomes suggestions for possible modifications to section 1400-1404 of the Program.

If adopted by the Council, the proposed policy would be as follows:

Procedures for Responding to Petitions for Rulemaking To Revise Power Plan

The following procedures are to be followed for handling requests that the Council enter rulemaking for purposes of revising the Council's Power Plan:

1. Any interested person may petition the Council to initiate a proceeding for the issuance, amendment or repeal of a rule according to 5 U.S.C. 553 in order to revise the Council's Power Plan.

2. Such a petition must be submitted to the General Counsel, Northwest Power Planning Council, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205.

3. The petition must:

(a) Set forth the substance or text of a proposed rule or amendment, or identify the rule requested to be repealed;

(b) Explain the interest of the petitioner in the action sought; and

(c) Set forth the facts, reasons and new information, not previously available, which the petitioner claims establish that it is necessary to issue, amend or repeal a rule promulgated by the Council.

4. The Council will conduct such investigation or proceeding as it deems appropriate in order to determine whether a petition should be granted. This proceeding may, but need not, include preparing and releasing a staff issue paper and holding one or more public hearings.

5. Within 120 days after receipt of a petition described in paragraph 1, the Council will either grant or deny the petition. Any final decision on a petition will be made at a public Council meeting in accordance with the notice provisions of the Government in the Sunshine Act and with the Council's normal practice of providing opportunity for public comment on its agenda items. If the Council grants the petition, the Council will promptly notify the petitioner and will commence a rulemaking proceeding. If the Council denies a petition, it will promptly notify the petitioner of the denial and the reasons therefor.

6. If the Council decides to enter rulemaking, it will proceed expeditiously to publish notice of a proposed rule in the **Federal Register** and to conduct such rulemaking in accordance with the Administrative Procedures Act and the Northwest Power Act.

7. The Council will make all reasonable efforts to take final action on the proposed rule within seven months after the Council's decision to enter rulemaking. The Council will take final action on the proposed rule within this

time, unless it finds that additional information or analysis is needed.

Edward Sheets,

Executive Director.

[FR Doc. 86-11614 Filed 5-22-86; 9:55 am]

BILLING CODE 0000-00-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: The delegation orders listed below are revised to reflect the authorities redelegated to the newly designated Associate Chief Counsel (International) and Assistant Commissioner (International) and other officials in their respective organizations. In addition, other changes have been made, where appropriate, to reflect the abolishment of the Assistant Commission (Support and Services).

Order No.	Title
4 (Rev. 17)	Authority to Issue Summonses, to Administer Oaths and Certify, and to Perform Other Functions.
5 (Rev. 11)	Emergency Order to Succession and Delegation of Authority.
8 (Rev. 9)	Authority to Sign Agreements as to Liability for Personal Holding Company Tax.
11 (Rev. 16)	Authority to Accept or Reject Offers in Compromise.
14 (Rev. 3)	Granting Extension of Time for Filing Statements in Accordance with 26 CFR 1.534-2.
16 (Rev. 6)	Authorization to Approve Confidential Expenditures.
19 (Rev. 14)	Payment of Expenses Incident to Transfer or Appointments of Employees to New Official Stations, Tour Renewal Agreement Travel, and Similar Items.
20 (Rev. 1)	Extension of Time to Pay Excess Profits, Estate and Gift Taxes.
21 (Rev. 1)	Extension of Time for Filing Returns and Paying Certain Excise Taxes.
24 (Rev. 1)	Authority to Require Records to be Kept.
27 (Rev. 10)	Authority to Administer Oaths Required by Law in Connection with Employment in the Federal Service.
29 (Rev. 3)	Certification and Approval of Internal Revenue Collections.
35 (Rev. 13)	Agreements as Determinations Under Section 1313(a)(4) of the Internal Revenue Code of 1954.
40 (Rev. 3)	Credits and Refunds.
42 (Rev. 20)	Authority to Execute Consents Fixing the Period of Limitations on Assessment or Collection Under Provisions of the 1939 and 1954 Internal Revenue Codes.
48 (Rev. 11)	Foreign Travel.
50 (Rev. 1)	Withholding Compensation Due Personnel.
56 (Rev. 1)	Gasoline and Lubricating Oil Bonds.
57 (Rev. 7)	Notice of Additional Inspection of Taxpayers Books of Account Under Section 7605(b), Internal Revenue Code 1954.
60 (Rev. 6)	26 CFR 601.106: Appeals Functions, Settlement of Cases Docketed in the United States Tax Court.
66 (Rev. 11)	Authority of Regional Director of Appeals in Protested and Tax Court Cases.
68 (Rev. 4)	Allowances and Differentials to Employees Serving in Foreign Areas.
69 (Rev. 5)	Designating Employees Who May Certify That Commercial Long Distance Calls Were Necessary in the Interest of the Government.
77 (Rev. 19)	Authority to Issue Statutory Notices of Deficiency.
91 (Rev. 1)	Service Agreement Between the Internal Revenue Service and the Agency for International Development (AID).
92 (Rev. 7)	Delegation of Authority in Training and Development Matters.
97 (Rev. 25)	Closing Agreements Concerning Internal Revenue Tax Liability.
100 (Rev. 4)	Furnishing Special Statistical Studies, Compilations, Return and Return Information, Training and Training Aids.
102 (Rev. 7)	Delegation of Authority in Labor-Management Relations Matters.
103 (Rev. 8)	Premium Pay for Administratively Uncontrollable Overtime.
106 (Rev. 11)	Delegation of Procurement Authority.
107 (Rev. 7)	Authority to Determine that Certain "Savings Institutions" do not intend to Avoid Taxes by Paying Dividends or Interest for Periods Representing More than 12 Months.
113 (Rev. 10)	Authority to Issue Exempt Organization Determination Letters.
114 (Rev. 6)	Designation to Act as "Competent Authority" Under Tax Treaties and Exchange of Information Agreements Authorized Under the Caribbean Basin Economic Recovery Act.
115 (Rev. 5)	Audit and Settlement fof Accountable Officers' Accounts-Revenue Accounting.
116 (Rev. 6)	Delegation of Authority to Grant Extension of Time to File Income and Estate Tax Returns.
122 (Rev. 1)	Assignment of Personnel Under Intergovernmental Personnel Act.
134 (Rev. 1)	Authority to Discharge an Executor From Personal Liability for Certain Income, Estate and Gift Taxes and to Issue Estate Tax Closing Letters.
136 (Rev. 5)	Authority to Sign Agreements Under Revenue Procedure 74-6 With Respect to Exercise by Trustee of Administrative and Investment Powers.
143 (Rev. 3)	Authority to Perform Certain Functions to Enforce 31 CFR 103 (Bank Secrecy Act Regulations.
144 (Rev. 2)	Authority to Issue Transfer Certificates in Certain Estate Tax Cases.
154 (Rev. 6)	Decision on Reports of Refunds and Credits to the Joint Committee on Internal Revenue Taxation.
156 (Rev. 7)	Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents.
157 (Rev. 4)	Seizure and Forfeiture of Personal Property.
163 (Rev. 2)	Authority to Perform Functions with Respect to the Northern Mariana Islands Social Security Tax.
171 (Rev. 2)	Authority of Regional Directors of Appeals Under 26 CFR 301.6511 and 26 CFR 301.6532.
173 (Rev. 4)	Nationwide Authority to Make Determinations on Certain Aluminum, Phosphate, Salt and Steel Related Issues.
178 (Rev. 3)	Authority to Obligate Funds for Payment to third Parties who Request Reimbursement for Cost of Complying with Summons.
187 (Rev. 1)	Determining Imprest Fund Requirements.
198 (Rev. 2)	Authority to Affix the Official Seal of Office of the Internal Revenue Service and to Certify to the Authenticity of Official Documents.
199 (Rev. 1)	Authority to Enter Into Interagency Reimbursement Agreements with the Department of State Relative to the On-Site Support of Overseas Offices of the Assistant Commissioner (International).
204 (Rev. 1)	Authority to Approve Rewards for Information Relating to Violations of Internal Revenue Laws.
205 (Rev. 1)	Consensual Monitoring of Wire and Non-Wire Conversations in Criminal Investigations.
206 (Rev. 1)	Delegated Responsibility for Referral Authority in Organized Crime Drug Enforcement Task Force Cases.
209 (Rev. 2)	Delegation of Authority in Partnership and S—Corporation Matters.
210 (Rev. 1)	Certain Determinations With Respect to Abusive Tax Shelter Partnerships.
213 (Rev. 1)	Authority to Issue Formal Document Requests.

The delegation orders are on file and may be reviewed in the IRS Freedom of Information (FOI) Reading Room, located at 1111 Constitution Ave., NW., Washington, DC 20024, Room 1545, or interested parties may contact the Disclosure officer at the appropriate IRS Regional office.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Arsenio Martinez, OP:EX:N, 1111 Constitution Ave. NW., Room 2517, Washington, DC 20024 (202) 566-6755 (Not a Toll-Free number).

William C. Roth,

Director, Office of National and International Programs.

The following delegation orders are revised:

Number		
4	60	136
5	66	143
8	68	144
11	69	154
14	77	156
16	91	157
19	92	163
20	97	171
21	100	173
24	102	178
27	103	187
29	106	198
35	107	199
40	113	204
42	114	205
48	115	206
50	116	209
56	122	210
57	134	213

Dated: May 5, 1986.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 86-11594 Filed 5-22-86; 8:45 am]

BILLING CODE 4830-01-M

[Policy Statement P-5-39 and Delegation Order No. 23 (Rev. 9)]

Policy Statement and Delegation of Authority; District Directors et al.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Policy Statement P-5-39 and Delegation Order No. 23 (Rev. 9).

SUMMARY: Policy Statement P-5-39 reflects that, in accordance with 31 U.S.C. 3723, The Small Claims Act, a

taxpayer may file a claim for reimbursement of certain expenses incurred due to an error by the Internal Revenue Service. Delegation Order No. 23 (Rev. 9) authorizes District Directors and Service Center Directors to consider, ascertain, adjust and determine, under U.S.C. 3723, claims for reimbursement of bank charges arising out of erroneous Service levies. The text of the policy statement and delegation order appears below.

EFFECTIVE DATE: May 2, 1986.

FOR FURTHER INFORMATION CONTACT: G. Stephen Ellis, C:PRP, Room 7212, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202 566–4946, (not a toll-free telephone number).

Linda Martin,

Director, Problem Resolution Staff.

Order No. 23 (Rev. 9)

Effective date: 5–2–86

Settlement of Tort Claims, Claims Under the Small Claims Act, and Claims Made by an Employee of the Internal Revenue Service for Damage to or Loss of Personal Property Incident to Service

1. Pursuant to Treasury Department Order No. 145 as revised, and Treasury Department Order No. 177–22 as revised, (Rev. 2), there is hereby delegated to the officials listed below the authority to handle the claims and amounts of claims as specified:

(a) Safety and Occupational Health Manager, National Office:

(1) The authority, under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, compromise, settle, and pay or transmit for payment claims for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Internal Revenue Service;

(2) The authority to consider, ascertain, adjust, and determine claims under 31 U.S.C. 3723;

(3) The authority under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, to settle and pay claims made by an employee of the Internal Revenue Service for damage to or loss of personal property incident to his/her service.

(b) Chief, Facilities Management Branch, each Regional Office, the authority under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, to settle and pay claims made by an employee within the respective regions in any amount of $500 and less, for damage to or loss of personal property incident to his/her service.

(c) District Directors and Service Center Directors, the authority to consider, ascertain, adjust and determine under 31 U.S.C. 3723 claims for reimbursement of bank charges arising out of erroneous Service levies.

2. This authority may not be redelegated.

3. Delegation Order No. 23 (Rev. 8) issued October 31, 1985, is superseded.

Dated: May 2, 1986.

Approved:

James I. Owens,

Deputy Commissioner.

Reimbursement of Bank Charges Due to Erroneous Levy

The Service recognizes that there are circumstances when an erroneous use of its unique enforcement powers may cause taxpayers to incur certain bank charges. Taxpayers who incur bank charges due to an erroneous levy may file a claim for reimbursement of those expenses. Bank charges include a financial institution's customary charge for complying with the levy instructions and charges for overdrafts that are a direct consequence of an erroneous levy. The charges must have been paid by the taxpayer and must not have been waived or reimbursed by the financial institution. Claims must be filed with the District Director or Service Center Director within one year after accrual of the expense.

The following criteria must be present in all cases:

(1) The error was caused by the Service;

(2) the taxpayers must not have contributed to the continuation or compounding of the error; and

(3) prior to the levy the taxpayers must have timely responded to any contact from the Service and have timely provided the Service with any requested documentation or documentation sufficient to establish their position.

Dated: May 2, 1986.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 86–11595 Filed 5–22–86; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 100
Friday, May 23, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 17565, dated May 13, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, May 19, 1986.

CHANGES IN THE MEETING: The following matters were postponed from the open portion of the meeting added to the closed session:

"Proposed Contracts for Expert Services in Connection with Court Cases" A majority of the entire membership of the Commission determined by vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of changes:
Clarence Thomas, Chairman
Tony E. Gallegos, Commissioner
William A. Webb, Commissioner
Fred W. Alvarez, Commissioner

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634-6748.

Dated: May 20, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued May 20, 1986.

[FR Doc. 86-11759 Filed 5-21-86; 10:57 am]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, June 2, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washigton, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed FY 1987 Funding Principles for State and Local Fair Employment Practices Agencies

Closed

1. Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: May 21, 1986.

Cynthia C. Matthews,

Executive Officer Executive Secretariat.

[FR Doc. 86-11809 Filed 5-21-86; 3:42 pm]

BILLING CODE 6750-06-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, May 28, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. (A) Proposed amendments to Regulation J (Collection of Checks and Other Items and Transfers of Funds) (proposed earlier for public comment; Docket Nos. R-0544 and R-0552); and (B) proposals to: (1) Eliminate or recover float attributable to nonstandard holidays and (2) establish a standard holiday schedule for Federal Reserve Banks (proposed earlier for public comment; Docket No. R-0558).

2. Publication for comment of a proposed standard format for wire transfers of funds on the FEDWIRE network.

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 21, 1986.

James McAfee

Associate Secretary of the Board.

[FR Doc. 86-11774 Filed 5-21-86; 11:40 am]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, May 28, 1986, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–11775 Filed 5–21–86; 11:40 am]

BILLING CODE 6210–01–M

5

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 18401, May 19, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Wednesday, May 28, 1986.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the agenda to be discussed in closed session.

5. *Opinion and Order:* Administrator v. Schwontkowski, Docket SE–6616; disposition of the Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: H. Ray Smith (202) 382–6525.

Catherine T. Kaputa,

Federal Register Liaison Officer.

May 20, 1986.

[FR Doc. 86–11732 Filed 5–21–86; 9:10 am]

BILLING CODE 7533–01–M

6

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 17852, (May 15, 1986).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, May 29, 1986 at 10:00 a.m.

CHANGES IN THE MEETING: The meeting has been rescheduled for Tuesday, May 27, 1986 at 10:00 a.m. In addition to the announced topic, the Commission also will consider possible revisions to the Commission's Rules of Procedure, Subpart M. Simplified Proceedings. 29 CFR 2200.200 through 2200.212.

Dated: May 21, 1986.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 86–11799 Filed 5–21–86; 3:10 pm]

BILLING CODE 7600–01–M

7

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 442b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, June 3, 1986, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, June 2, 1986, but it will consist entirely of briefings and not open to the public.

Agenda

Tuesday Session

June 3, 1986–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 5–6, 1986.
2. Remarks of the Postmaster General.
3. Report of the Chief Postal Inspector. (Mr. Clauson, Chief Postal Inspector, will make present this item.)
4. Chief Inspector's Report on Consumer Protection (Pub. L. 98–186). (Mr. Clauson will make this presentation.)
5. Tentative agenda for July 7–8, 1986, meeting in Washington, DC.

David F. Harris,

Secretary.

Paul J. Kemp,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 86–11768 Filed 5–21–86; 11:23 am]

BILLING CODE 7710–12–M

Federal Register

Friday
May 23, 1986

Part II

Department of Transportation

Office of the Secretary

49 CFR Parts 27 and 609

Nondiscrimination on the Basis of Handicap in Financial Assistance Programs; Final and Proposed Rules

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

[Docket No. 56b; Amdt. No. 27-3]

Nondiscrimination on the Basis of Handicap in the Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule requires recipients of financial assistance from the Department of Transportation for urban mass transportation to establish programs to provide transit services to handicapped persons. The service must meet certain service criteria. The rule also establishes a limit on the amount of money a recipient must spend to meet these criteria. The rule carries out section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C 1612(d)), as they apply to the Department's financial assistance program for urban mass transportation. In an accompanying notice of proposed rulemaking, the Department is proposing provisions concerning commuter rail systems and certain other matters.

EFFECTIVE DATE: This final rule is effective June 23, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulations and Enforcement, U.S. Department of Transportation, Room 10424, 400 7th Street, SW., Washington, DC 20590; (202) 426-4723 (voice) or (202) 755-7687 (TDD). The Department is currently in the process of installing a new telephone system. As a result, the voice information number is expected to change, during July 1986, to (202) 366-9305. The TDD number is not expected to change. This rule has been taped for use by visually-impaired persons. Requests for taped copies of the rule should be made to Mr. Ashby.

SUPPLEMENTARY INFORMATION:

Highlights of the Rule

This final rule creates a new Subpart E of 49 CFR Part 27, Department's rule on nondiscrimination on the basis of handicap in financial assistance programs. The rule carries out section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)), as they apply to the Department's financial assistance program for urban mass transportation. The new Subpart E replaces the present § 27.77, which originated in a July 1981 interim final rule.

With a few exceptions, the new rule requires each recipient of financial assistance from the Urban Mass Transporatation Administration (UMTA) to prepare a program for providing transportation services to handicapped persons. The recipient must go through a public participation process, including consultation with handicapped persons. Within a year from the effective date of this rule, the recipient must transmit the program to UMTA for approval.

Recipients may fulfill their obligations under the rule by choosing either a special service (e.g., dial-a-van, taxi voucher), an accessible bus system (either a scheduled or on-call accessible bus system), or a mixed system (i.e., a system having both special service and accessible bus elements). Whatever type of service the recipient elects to provide, the service must meet the following six service criteria:

(1) All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public must be eligible to use the service for handicapped persons;

(2) Service must be provided to a handicapped person within 24 hours of a request of it;

(3) Restrictions or priorities based on trip purpose are prohibited;

(4) Fares must be comparable to fares charged the general public for the same or a similar trip;

(5) The service for handicapped persons must operate throughout the same days and hours as the service for the general public; and

(6) The service for handicapped persons must be available throughout the same service area as the service for the general public.

The rule spells out how the six criteria apply to each kind of transportation system.

The rules establishes a limit on the amount of money a recipient is required to spend to meet these service requirements. This limit on required expenditures is calculated by taking 3.0 percent of the recipient's average operating costs; over the current and two previous fiscal years.

If the recipient cannot meet the six criteria for the type of service it chooses without exceeding this limit on required expenditures, the recipient may modify its service to keep its expenditures within the limit, after consultation through its public participation process.

The rest of the rule's provisions are primarily administrative in nature. They concern such subjects as the expenses eligible to be counted in determining whether a recipient has exceeded its limit on required expenditures, UMTA monitoring of recipients' actions, special provisions for small recipients and multi-recipient regions, and technical exemption procedures.

The Department has performed a Regulatory Impact Analysis (RIA) in connection with this rule. This analysis, based on case studies of several existing systems and a computer model study of a large sample of systems, projects the annual and long-term costs and cost-effectiveness of various approaches to providing transportation service to disabled persons. A copy of the RIA has been placed in the docket for this rulemaking.

In an accompanying notice of proposed rulemaking (NPRM), the Department is proposing requirements for commuter rail systems, on which comments are being requested for 90 days. The NPRM also proposes to incorporate vehicle and fixed facility standards, as well as the reduced fare requirement for elderly and handicapped passengers, from 49 CFR Part 609, which would be withdrawn.

Background of the Rulemaking

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in federally-assisted programs. The Department's existing regulation, 49 CFR Part 27, implements this statute in the Department's mass transit programs. This 1979 regulation imposed accessibility requirements for DOT-assisted highways, airports, intercity rail service, and mass transit.

In *American Public Transit Association* v. *Lewis*, 556 F.2d 1271 (D.C. Cir., 1981), the U.S. Court of Appeals for the District of Columbia Circuit held that, under section 504, a transit authority might be required to take "modest, affirmative steps to accommodate handicapped persons". The Court said, however, that the 1979 regulation, as applied to mass transit, exceeded the Department's section 504 authority because it required overly costly efforts to modify existing systems.

The Department reviewed the rule and determined that its policy is that recipients of Federal assistance for mass transit must provide transportation that handicapped persons can use but that local communities have the major responsibility for deciding how this transportation should be provided.

Consistent with this policy and the Court decision, the Department issued

an interim final rule in July 1981. It deleted the mass transit requirements of the original regulation and substituted a new § 27.77. This section required recipients to certify that special efforts are being made in their service area to provide transportation that handicapped persons can use.

In 1983 Congress passed section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)). It provides as follows:

> In carrying out subsection (a) of this section [section 16(a) of the Urban Mass Transportation Act of 1964, as amended] section 165(b) of the Federal-Aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973 (consistent with any applicable government-wide standards for the implementation of such section 504), the Secretary shall, not later than 90 days after the date of enactment of this subsection, publish in the Federal Register for public comment, proposed regulations and, not later than 180 days after the date of such enactment, promulgate final regulations, establishing (1) minimum criteria for the provision of transportation services to handicapped and elderly individuals by recipients of Federal financial assistance under this Act or any provisions of law referred to in section 165(b) of the Federal-Aid Highway Act of 1973, and (2) procedures for the Secretary to monitor recipients' compliance with such criteria. Such regulations shall include provisions ensuring that organizations and groups representing such individuals are given adequate notice of and opportunity to comment on the proposed activities of recipients for the purpose of achieving compliance with such regulations.

In order to implement this statute, as well as to replace the interim final rule with a permanent regulation, the Department published a notice of proposed rulemaking (NPRM) on September 8, 1983 (48 FR 40634). The NPRM proposed that recipients' service for handicapped persons had to meet a series of service criteria, but recipients were not required to spend more than a certain amount in a given year to provide this service.

The Department received more than 650 comments on the NPRM. The commenters included handicapped persons and groups representing them, local transit authorities and state transportation agencies, other transportation providers, private and public human service agencies, members of Congress, and members of the general public.

Legal Background and Issues

Basic Statutes

The legal authority for DOT's regulatory efforts in the area of mass transit service for handicapped persons comes from three statutes in addition to section 317(c). Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) provides that

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

Section 165(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)) provides that

> It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance in the field of mass transportation (including the programs under this Act) should contain provisions implementing this policy.

Section 165(b) of the Federal-aid Highway Act of 1973, as amended, applies a similar requirement to mass transit projects funded under the Federal-aid Highway Act's interstate transfer provisions.

Court Interpretations of Section 504 and Section 16(a)

Since the mid-1970s, numerous court decisions have interpreted section 504 and section 16(a). The case law generally supports the proposition that these statutes do not require specific facilities or vehicles to be made accessible (e.g., there is no statutory right to bus accessibility). *See, e.g., United Handicapped Federation* v. *Andre*, 558 F.2d 413 (8th Cir. 1977); *Leary* v. *Crapsey*, 556 F.2d 863 (2nd Cir. 1977); *Vanko* v. *Finley*, 440 F. Supp. 656 (N.D. Ohio 1977); *Dopico* v. *Goldschmidt*, 518 F. Supp. 1161 (S.D.N.Y. 1981), *rev'd on other grounds* 687 F.2d 644; *Lloyd* v. *Chicago Regional Transportation Authority*, 518 F. Supp. 575 (N.D. Ill. 1982).

This same line of cases holds that the rights of handicapped users of federally-assisted mass transit services, and the obligations of transit authorities, are defined by DOT's regulations. These cases emphasize the Secretary's discretion in carrying out the statutes. In addition to the cases cited above, see also *Atlantis Community* v. *Adams*, 453 F. Supp. 831 (D. Colo., 1978) and *Michigan Paralyzed Veterans* v. *Coleman*, 451 F. Supp. 7 (E.D. Mich. S.D., 1977). This proposition was most recently reaffirmed in *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority (RIPTA)*, 718 F.2d 490 (1st Cir., 1983), where the court explicitly held that a transit authority that complied with the present 49 CFR 27.77 had met its statutory obligations.

The courts have held that an agency's discretion in fashioning rules in this area has some limits, however. This line of cases began with *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979).

Davis involved a federally-funded nurse training program. The hearing-impaired plaintiff was denied entry into the training program on the ground that her hearing disability made it unsafe for her to practice as a nurse and to participate safely in normal clinical training programs.

The Supreme Court held that it was not a violation of section 504 for the College to deny plaintiff's entry into the training program, saying that section 504 does not mandate "affirmative action" to accommodate the needs of handicapped individuals. 442 U.S. at 441. The court noted that:

> Technological advances can be expected to enhance opportunities to rehabilitate the handicapped or otherwise to qualify them for some useful employment. Such advances may also enable attainment of these goals without imposing undue financial and administrative burdens on a state. Thus situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory.

442 U.S. at 412–413.

Davis was applied to the Department of Transportation's 1979 section 504 regulation by *APTA, supra*. The Court of Appeals held that section 504 did not provide authority to the Department for the regulation it had issued. Citing the portions of the *Davis* case quoted above, the court said:

> Applying these standards to public transit, we note that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities.

695 F.2d at 1278.

The court remanded the rule to the Department to consider whether section 16(a) and 165(b) would independently support the 1979 requirements. The preamble to the July 1981 interim final rule noted that "while the court allowed the Department to consider whether section 16 and section 165, among other statutes, might support the requirements of Subpart E, we believe that these statutes do not mandate, although they

may permit, the kinds of affirmative action that Subpart E contained." (46 FR 37491, July 20, 1981).

The *Dopico* case further elaborated the scope of obligations that can be imposed under section 504. The Second Circuit Court said that, while section 504 does not authorize massive relief, the statute can authorize some portion of the relief plaintiffs asked for, within appropriate statutory limits. The court stated that the *APTA* case only

> Sketches the outer limits, in the mass transportation context, of the limitation laid down by the Supreme Court in *Davis*. The key issue is whether *Davis* not only proscribed forcing massive restructuring of transportation programs, but in fact prohibits any . . . prospective relief in this setting.

687 F.2d at 651.

The court commented that since, according to *APTA*, section 504 may require "modest affirmative steps" to accommodate handicapped persons in public transportation, it is logical to assume that Congress intended that some steps could be required to be taken to effectuate the intent of the statute.

In the *Davis* fact situation, the court pointed out, the college would have had to restructure its training program to render unnecessary a nursing student's ability to hear. This was a fundamental change in the nature of the program. In *Dopico*, however,

> Plaintiffs do not seek fundamental changes in the nature of a program by means of alterations in its standards. They do not, to adapt the [*Davis*] example. . ., demand that the physical qualifications for the job of bus driver or motorman be altered so the handicapped are not excluded. The existing barriers to the "participation" of the wheelchair-bound are incidental to the design of facilities and allocation of services rather than being integral to the nature of the public transportation itself, just as a flight of stairs is incidental to a law school's construction but has no bearing on the ability of a otherwise qualified handicapped student to study law . . . The issue here is purely economic and administrative—how much accommodation is called for by regulations implementing the Rehabilitation Act . . . While it is bounded, after *Davis*, by a general proscription against "massive" expenditures, the question is one of the degree of effort necessary rather than whether any effort at all is required.

687 F.2nd at 653. *See also Lloyd*, 548 F. Supp. at 584–85.

A recent Supreme Court decision, *Alexander* v. *Choate*, 105 S. Ct. 712 (1985), elaborated further on the "undue burdens" standard originating in the *Davis* and *APTA* cases.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers" (*Id.* at 721) and that *"reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n.21) (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' . . . or that would constitute 'fundamental alteration(s) in the nature of a program.' " (*Id.*, n.20, citations omitted).

Because *Alexander* was decided after the comment period on the proposed regulation closed, the Department would have allowed additional comments if it believed that a change in the rule was necessary. *Alexander*, however, supports the position, based on *Davis*, *APTA*, and other cases, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens, that the refusal to undertake the accommodations is not discriminatory. Thus, the failure to include an "undue burdens" provision like § 27.97 could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Therefore, the *Alexander* case does not significantly alter the legal bases for the rule. The limit on required expenditures of § 27.97 ensures that the rule will not unduly burden recipients, and further changes to or comments upon the rule are not necessary in response to *Alexander*.

Section 317(c) and its Legislative History

An amendment to the Surface Transportation Assistance Act of 1982 concerning transportation services for elderly and handicapped persons was introduced by Senator Alan Cranston, for himself and Senator Donald Riegle, as floor amendment No. 5011 on December 14, 1982 (128 Cong. Rec. S 14740). The text of amendment No. 5011, which differs in a number of ways from the enacted version of section 317(c), is as follows:

> In carrying out subsection (a) of this section, section 165(b) of the Federal-aid Highway Act of 1973, and section 504 of the Rehabilitation Act of 1973, the Secretary, not later than 90 days after the date of the enactment of this paragraph, shall publish in the **Federal Register** for public comment, proposed regulations and, not later than 180 days after the date of such enactment, shall promulgate final regulations, establishing (A) minimum criteria for each recipient of Federal financial assistance under this Act or the Federal-aid Highway Act of 1973 to provide handicapped and elderly individuals with transportation services that such individuals can use and that are the same as or comparable to those which such recipient provides to the general public, and (B) procedures for the Secretary to monitor and ensure compliance with such criteria. Such regulations shall include provisions for ensuring that organizations and groups representing such individuals are fully consulted by such recipients in the process of determining and carrying out actions to provide such transportation services to such individuals.

Senators Cranston and Riegle, in discussing their proposed amendment, made several points. First, they made it clear that their amendment did not mandate a return to the full accessibility standards of the Department's 1979 section 504 regulation. For example, Senator Riegle said

> I am not proposing an enormously costly burden for transit systems or requiring an immediate return to the controversial, tough standards that were in place before July 1981. (128 Cong. Rec. S15714).

Second, the sponsors of the amendment said that provision of service by recipients under the Department's July 1981 Interim Final Rule was inadequate. They cited a General Accounting Office (GAO) survey of 84 transit systems. This survey showed, they said, that only 30 of the systems surveyed intended to have 50 percent or more of their buses lift-equipped. Of the 66 that offered paratransit service, 22 had waiting lists, 61 required 24 hours or more advance notice, 38 set service priorities by trip purpose and only 6 did not deny requests for service. Compared to the bus service in these 66 systems, 45 systems had shorter service hours, 35 operated on fewer days, and the geographical area covered by paratransit service was less extensive in 15 cases. In addition, 25 percent of the paratransit vehicles these systems used were not wheelchair accessible. (128 Cong. Rec. S14741, statement of Sen. Cranston). Both Senator Riegle and Senator Cranston later referred to the survey as showing "wide-spread deficiencies" in paratransit service. (128 Cong. Rec. S14719, S15716).

The sponsors of the amendment proposed the minimum service criteria requirement as a response to these perceived deficiencies. In describing this requirement, Senator Cranston said

> It would require the Secretary to establish national criteria for providing handicapped and elderly persons with comparable usable transportation services. In this regard, I would note that the Secretary would have broad discretion to formulate those criteria, and I am not sure that I or many others deeply concerned about these issues would

necessarily be satisfied with the criteria that the Secretary would develop. But I believe it is even less productive to have regulations implementing section 504 and UMTA section 16 that set no minimum standards, no bottom line. (128 Cong. Rec. S14742, S15716).

Senator Riegle described the kinds of issues that the "comparability" standard raises:

> Services for handicapped and elderly persons should cover the same general geographic area as do services for the general public. The fares charged handicapped and elderly persons should not on the average exceed the fares charged the general public for trips between the same destinations. Services for handicapped and elderly persons should not be denied or delayed based on the purpose of their trips.
>
> The response time for services for handicapped and elderly persons should not impose an undue burden upon them. I would hope the Secretary would allow no more than 24 hours advance notice—preferably less—to be required. He could provide for progressively diminishing advance-notice maximums. (128 Cong. Rec. 515715).

The sponsors denied proposing an "enormously costly burden for transit systems." (128 Cong. Rec. S14741). As a means of dealing with the costs of providing such service, the Senators referred to the discretionary 3.5 percent "set-aside" provision of their amendment. In this context, Senator Cranston said

> Recognizing that the proposed gas tax would provide a new source of funding for transit for capital improvements, this amendment would authorize—but not require—the Secretary of Transportation to set aside a modest portion of that new funding for capital improvements specifically for the purpose of enabling the needs of elderly and handicapped persons to be met . . . These funds could well be spent to help correct the situation (128 Cong. Rec. S 14742; see also 128 Cong. Rec. S 15714–15715, statement of Sen. Riegle).

Senator Riegle also commented on the issue of costs, saying that

> With respect to the requirement that regulations be promulgated, as I am sure Senators can appreciate, since the criteria that this amendment would require would be developed by the Secretary of Transportation, it is not possible to forecast specifically what cost they might entail for transit systems. Obviously, for those systems that have continued to make progress toward providing adequate service for handicapped persons, the costs would be minimal. For those who have neglected the needs of these individuals the costs can be expected to be more substantial. In any event, through the use of the discretionary set-aside, the Secretary would be able to minimize the cost impact. (128 Cong. Rec. S15715).

A Conference Committee wrote the final version of the statute. The Committee dropped the "same or comparable" language and substituted minimum criteria "for the provision of transportation services to elderly and handicapped individuals." In addition, the Conference Committee version requires that elderly and handicapped individuals be "given notice of and opportunity to comment on the proposed activities of recipients for the purpose of achieving compliance with such regulations," instead of being "fully consulted" about "determining and carrying out" recipients' actions.

In discussing the Conference version of section 317, Senator Cranston made several points. He mentioned again that the Secretary has the authority "to set aside up to 3.5 percent [of UMTA appropriations] for the provision of section 16(b) assistance for handicapped and elderly individuals' transportation."

Senator Cranston also asserted that the provision in the compromise version was

> Faithful to the purposes of the Senate-passed amendment—to make clear the fundamental Federal responsibility to make provision for the transportation needs of handicapped and elderly individuals. It requires the Secretary of Transportation to establish national uniform criteria for the provision of transportation services to handicapped and elderly persons: thus the compromise rejects as unsatisfactory the Department of Transportation's July 1981 Interim Final Rule, which fails to establish any such criteria. (128 Cong. Rec. S16029).

Senator Cranston's statement does not mention the deletion of the "same or comparable" language.

Senator Cranston also said that the Conference version requires that

> The Secretary's regulations establish procedures for monitoring transit system activities in order to ensure compliance with the newly established criteria and include provisions for ensuring that handicapped and elderly persons are provided, through groups representing them, with a meaningful role in the planning of services meeting their needs by requiring that they be afforded adequate notice of and the opportunity to comment on proposed activities of recipients to achieve compliance with the new criteria. (*Id.*)

Neither Senator Cranston's proposed amendment nor anything similar to it was ever independently considered by the House of Representatives. Consequently, there is no legislative history from the House.

Legal Issues Affecting the Final Rule

(a) *"Comparability".* Many commenters asserted that key portions of the NPRM were legally wrong. The American Public Transit Association (APTA) provided the most thorough statement of transit industry arguments. Representative statements of the position of advocacy groups for disabled persons are found in the comments of the Disability Rights Education and Defense Fund and the Paralyzed Veterans of America.

APTA's first major argument is that the service criteria of the NPRM, taken singly or together, create, in effect, a requirement for providing the same or comparable service. Referring to the deletion in conference of the "same or comparable" language of the original Senate version of section 317(c), APTA argues that the statute cannot be viewed as a justification for criteria having this effect. APTA also asserts that the criteria represent an overly expansive response to section 317(c), saying that

> There is no evidence or justification for the inclusion of regulatory language covering any or all of the six specific criteria included in the proposal. Achieving compliance with the service criteria, as presently proposed, even under a cost cap, is likely to result in fundamental alterations to recipients' existing programs . . ., in direct contradiction of the Supreme Court decision in *Southeastern Community College* vs. *Davis*. . . .

The deletion by the Conference Committee of the "same or comparable" language of the original version of the amendment may reasonably be interpreted as meaning that the minimum criteria required by this statute do not have to result in service for handicapped persons that is the same as or comparable to that provided to the general public. However, it is not reasonable to read the statute as saying that the Department is prohibited from establishing criteria that, to some degree, approach having that effect. Senator Cranston's post-conference statement specifically said that the statute was faithful to the purposes of his amendment, and that it required the Secretary to establish "national uniform criteria" for the provision of transportation services to handicapped persons. (128 Cong. Rec. S 16028).

(b) *Service Criteria.* APTA's claim that "there is no evidence or justification for the inclusion of regulatory language covering any or all the six specific criteria included in the proposal" is at odds with the legislative history of section 317(c). The criteria address, for example, several of the deficiencies in service in current service cited by Senators Cranston and Riegle on the basis of the GAO Study. The two Senators explicitly sought to correct these deficiencies through the service criteria provision of their amendment. The criteria also are very similar to those incorporated in 1980 legislative proposals on this subject, which formed

an important part of the background for the amendment.

(c) *"Fundamental Alteration" of Transit Programs.* We do not agree that achieving compliance with the NPRM's service criteria, given the limit on required expenditures, would result in a "fundamental alteration to recipients' existing programs." The Circuit Court in *Dopico* made a persuasive distincition between fundamental changes, in the sense discussed by *Davis*, and other changes to accommodate handicapped persons in mass transit systems. The plaintiffs in *Dopico*, the court said, were not seeking fundamental changes in the nature of a program analogous to those in *Davis*. Rather, in the court's view, they were simply seeking to eliminate incidental physical barriers to the participation of handicapped persons in a program that would continue to operate in its usual way. *See* 687 F.2nd at 653.

A nursing program without a clinical component is clearly a very different kind of program. There is no such dramatic qualitative difference between an inaccessible bus system and a bus system that handicapped people can use because its buses have lifts. A paratransit system that provides curb-to-curb service to wheelchair users is not fundamentally changed by a requirement that it provide that same service on weekends as well as Monday through Friday. Under these circumstances, the nature of the program does not undergo a fundamental change.

(d) *Undue Financial Burden.* APTA also said that expenditures to comply with the NPRM, even though constrained by the regulatory cost limit, would represent such a significant increase in funding devoted to transportation for elderly and handicapped persons as to constitute an "undue financial and administrative burden" on recipients, contrary to the D.C. Circuit Court's ruling in the *APTA* case.

The court in *APTA* was quite specific about the things it considered to impose unacceptably heavy burdens. The court said that the 1979 regulations

> Require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities. Every new bus or subway car must be accessible to wheelchair users regardless of cost; elevators and other modifications must be added to existing subways. . . . These are the kinds of burdensome modifications that the *Davis* court held to be beyond the scope of section 504.

695 F.2nd at 1280.

This final rule differs markedly from the 1979 regulations. Recipients have a choice of how to meet their obligations and can choose a less costly, rather than more costly, approach to compliance. Even if a recipient chooses to comply through bus accessibility, every new bus need not be accessible to wheelchair users. Only those buses needed to meet service criteria must be accessible. Accessibility requirements are not "regardless of cost;" a limit is explicitly provided to constrain the cost exposure of recipients. Accessibility modifications to subway facilities and vehicles are not required at all.

As noted in the section of the preamble concerning the cost limit, many recipients are likely to be able to comply for less than their "limit" amounts. This is particularly true for recipients in larger cities and those who choose a less costly and more cost-effective means of providing service, such as user-side subsidies through private sector service providers. The phase-in period of up to six years will prevent recipients from having to incur unreasonably high start-up costs, or from having abruptly to increase their expenditures. The overall projected costs of this rule are far lower than those of the 1979 rule. We project the following 30-year discounted present value:

1979 rule (DOT estimate)—$3.99 billion
1979 rule (Congressional Budget Office estimate)—$9.04 billion
1986 rule cost limit (3.0% of nationwide operating costs)—$2.37 billion
1986 rule, Paratransit alternative costs—$.98 billion
1986 rule, 50% accessible bus system costs—$.69 billion

All costs are expressed in 1983 dollars.

We would also point out that the rule, and its requirements for service criteria, rest, in addition to section 504, on section 317(c), a statute passed since the *APTA* case, and section 16(a), to which the *APTA* holding does not specifically apply. While the Department may reasonably consider and limit the cost impacts of a regulation promulgated under all these authorities, the *APTA* "undue burdens" strictures apply directly only to section 504.

(e) *Consistency of a Limit on Required Expenditures with Section 317(c).* Many handicapped commenters argued that it was inconsistent with section 317(c) for the Department to provide a cost cap to limit the expenditures that transit authorities are required to make in meeting the regulation's service criteria. The Disability Rights Education and Defense Fund, for example, said that

> The two concepts, minimum service criteria and spending limitation, are mutually exclusive. If service criteria can be traded-off for cost considerations, there is no minimum level of service. Therefore, the DOT proposed rule does not adequately implement section 317(c).

In other words, the Fund contends, section 317(c) requires the Secretary to establish "minimum" criteria for the provision of transportation service to handicapped persons. If a recipient is able to avoid meeting some of the prescribed criteria because it has reached a certain level of expenditure, then the criteria are not truly "minimums."

Because the *APTA* case's "undue burdens" language was not specifically applied to section 16 and section 165(b), the Fund believes, the Department's view that regulations should be designed to avoid the imposition of undue financial and administrative burdens is mistaken. Though none of the commenters making this argument explicitly say so, their argument clearly implies that the Department has an obligation under section 16 to impose minimum service criteria without any regard to the cost of compliance.

Much of the weight of these commenters' position that the Department cannot establish a limit on required expenditures rests on what is, in context, an overly literal reading of the word "minimum." We do not believe that this reading will bear the weight. The Department's approach is consistent with the directions of Congress.

Case law, and section 317(c) itself, suggest that recipients' obligations under all the relevant statutes should be viewed together. There is no evidence that Congress considered, let lone intended to mandate, that section 317(c) would require the Department to do what it is prohibited from doing under section 504—impose open-ended, undue administrative and financial burdens in order to improve service for handicapped persons. Indeed, section 317(c) says that this rule must be "consistent with any applicable government-wide standard for the implementation of [section 504]. . . ." These standards, of course, are read in light of the *Davis* and *APTA* cases.

Both sponsors of section 317(c) said "I am not proposing an enormously costly burden for transit systems. . . ." (128 Cong. Rec. S 14741, S 15719). Senator Riegle differentiated between recipients that have already made progress toward making adequate service for handicapped persons, saying that their costs would be minimal, and recipients who have neglected the needs of handicapped individuals, whose costs could be expected to be more substantial (128 Cong. Rec. S 15715).

This statement recognizes that costs will be imposed on transit authorities, in varying degrees, but does not suggest that these costs cannot be limited. Indeed, Senator Riegle said that "since the criteria that this amendment requires would be developed by the Secretary of Transportation, it is not possible to forecast specifically what cost they may entail for transit systems." *(Id.)* This statement suggests that the sponsors of the amendment contemplated that the Secretary could exercise discretion and control with respect to the imposition of costs.

As noted above, both Senators referred to the authorized 3.5 percent set-aside under the section 317(a) of UMTA discretionary funds for use in transportation for elderly and handicapped persons. The maximum amount available to the Secretary under this set-aside would have been approximately 43 million dollars for fiscal year 1984 and 38 million dollars for fiscal years 1985 and 1986. If these amounts would be able to "help" or "minimize" the cost impact of the criteria established by the Secretary, then the sponsors of the amendment did not contemplate that the Secretary's criteria would have massive, open-ended cost impacts on recipients.

Senator Cranston, after noting that the Secretary would have discretion to formulate criteria, said that even if he might not be satisfied with the criteria the Secretary established, it was "even less productive to have regulations implementing section 504 and UMTA section 16 that set no minimum standards, no bottom line." (128 Cong. Rec. S14712). In discussing the conference version of the amendment, he added that it rejected as "unsatisfactory the Department of Transportation's July 1981 Interim Final Rule which fails to establish any such criteria." (128 Cong. Rec. S16028). From these and similar statements in the legislative history, it is clear that the central thrust of the amendment was to ensure the replacement of the interim final rule with a regulation that had a "bottom line." A rule incorporating a set of specific service criteria, and a limit on the money that recipients are required to spend to achieve them, constitutes a "bottom line" approach that differs substantially from the approach of the 1981 interim final regulation and is consistent with section 317(c).

Section-by-Section Analysis

This portion of the preamble discusses each section of the final rule, focusing on the significant comments on each issue, the Department's response to these comments, and the Department's reasons for making the decisions incorporated in the final rule. Additional guidance concerning the Department's interpretations of the regulatory provisions themselves is found in the appendix that follows the text of the regulations.

Amendments to Section 27.5 Definitions.

In addition to creating a new Subpart E of 49 CFR Part 27, the Department has decided to add two new terms to the definitions in § 27.5 of the regulation. These two terms, "special service system" and "mixed system," are used frequently in Subpart E, making the publication of definitions useful for the sake of clarity.

"Special service system" is defined as a transportation system specifically designed to serve the needs of persons who, by reason of handicap, are unable to use mass transit systems designed for the use of the general public. This definition encompasses a wide variety of ways of providing service. The second sentence of the definition is intended to identify the typical characteristics of a special service system.

The Department recognizes that some recipients will probably choose not to use the same mode of providing service to handicapped persons at all times and in all places. For instance, a recipient might provide transit authority operated dial-a-van service during peak hours, but rely on a user-side subsidy system through private providers for off-peak service. A number of combinations of accessible bus and special service are possible. A "mixed system" is any one of these combinations.

Section 27.81 Program requirement.

The NPRM required that all recipients create a program for the provision of transportation services to handicapped persons. This requirement attracted little comment. In the Department's view, this requirement is necessary in order to serve as a focus for the planning process and to produce documentation that the public, the Metropolitan Planning Organization (MPO), and UMTA can review to ensure that the recipient's service for handicapped persons will be adequate and consistent with regulatory requirements.

In response to suggestions from transit authorities and other commenters that the regulation should allow a phase-in period for substantive compliance with this rule, the Department has decided to permit recipients to take up to six years to reach the full performance level, if this time is necessary. The recipient will be expected to plan to provide service at the full performance level as soon as reasonably feasible, within this six year period. This phase-in period is set forth in section 27.95 of this Subpart. Consistent with this provision, paragraph (a) requires the recipient's program to call for providing service at the full performance level within the phase-in period. In addition, in response to comments from handicapped advocacy groups and planning agencies, paragraph (a) requires recipients' programs to include "milestones" showing how, year-by-year, the recipient will progress toward the full performance level.

The NPRM proposed that section 18 recipients (section 18 of the UMT Act establishes a program of financial assistance to small urban and rural areas) would not have to create a program like that of urban mass transit authorities, since the needs for service and the resources and means for providing service and administering Federal regulatory requirements in rural areas are likely to differ from the situation of cities.

Almost all the transit agencies commenting on this issue supported the NPRM approach, and there were few objections from handicapped persons. The Department will continue to treat section 18 recipients separately. Several commenters suggested that we extend the separate treatment afforded section 18 recipients to small rural and urban systems which may also receive funds under other UMTA programs. We have decided to adopt this comment, and the reference to recipients covered by § 27.91(a) excepts from the program requirement all recipients which do not serve an urban area of over 50,000 population.

Some commenters were concerned about recipients which do not themselves provide transportation services, but merely pass on UMTA funds to other transit providers. For example, an MPO or a city government may receive section 9 money, which it passes on to a transit authority. Only the transit authority actually provides service. Paragraph (a) requires only the public agency that actually provides the service to prepare and submit a program. This provision is intended to ensure that local agencies do not have to duplicate one another's efforts.

In addition, a few rail-only operators, whose service facilities are either already accessible pursuant to Architectural Barriers Act requirements or whose rail systems are not covered by the rule, said that the rule should not impose program requirements on them. We agree. Therefore, the program

requirement will apply only to recipients which provide transportation services to the public by bus.

A few comments discussed special problems of section 16(b)(2) recipients. These recipients (normally private, non-profit social service agencies) typically provide services only to handicapped persons. One recipient, whose UMTA funds come from sources other than section 16(b)(2), also said that its system served only elderly and handicapped persons, the rest of the public being served by a privately-operated bus system.

The Department agrees that section 16(b)(2) recipients, and other recipients who provide service only to elderly and/or handicapped persons, are a special case, and they will not have to submit programs under this section.

Section 27.83 Public participation and coordination.

Section 27.77(g)(1)–(4) of the NPRM set forth public participation requirements. Recipients were to consult with handicapped persons and other interested individuals and groups, have a 60-day public comment period and at least one public hearing, submit their program to the local MPO for comment, and respond to the significant comments made by the public or the MPO.

A large number of handicapped persons and groups representing handicapped persons commented on this portion of the NPRM. Relatively few transit authorities addressed the section. Some social service agencies, private transportation providers, and other persons also commented on public participation.

Amost all of the handicapped commenters said that the public participation mechanism of the proposed rule was inadequate. A primary reason for this inadequacy, they said, is that it required public participation only at the time that the recipient was putting its program together. Public participation should be required, according to these commenters, at all stages of the planning and implementation of the recipients' service.

The Conference Committee version of section 317(c), unlike the original amendment, required only an opportunity for notice and comment on the recipient's program. This is precisely what the NPRM proposed. However, the Department believes that a reasonable degree of continuing public participation is valuable to the effective implementation of recipients' programs. Continuing participation permits users of the services, and other interested persons, to have access to the recipient with respect to questions and problems that arise concerning the provision of service. In addition to allowing the voices of consumers to be heard, such participation can also provide useful information to the recipient that will help it to respond quickly and appropriately to service-related problems.

Therefore, the Department has added a provision that requires the recipient to establish a mechanism for continuing public participation. This provision is drawn from § 27.107(b) of the Department's 1979 section 504 regulation. Recipients appeared to have little problem with establishing such mechanisms under the 1979 rule; several recipients commented to the dockiet that they had such mechanisms in operation. The Department believes that this requirement will create little additional burden for recipients.

Many handicapped commenters wanted further requirements in this area, suggesting that DOT mandate the creation of handicapped advisory committees. Some of these comments also requested that DOT establish rules for the membership and operation of these committees and require recipients to obtain the committees' approval for their programs.

The Department is not adopting these suggestions. Advisory committees can be a useful tool. Many such committees already exist, and the Department encourages their formation and effective use. However, the Department does not believe it should be mandatory for all recipients to establish such committees. In some localities, other mechanisms could be equally effective in ensuring continuing public participation.

Some comments mentioned problems with some existing advisory committees. For example, it is alleged that recipients have "packed" advisory committees with individuals who favored the recipients' positions, excluding critics. It is also alleged that recipients have failed to provide the committees with adequate information, or have ignored the committees' recommendations.

The Department believes that it would not be feasible to impose a Federal requirement concerning the membership of advisory committees. A reasonable specific membership requirement would be very difficult to devise on a national basis, and a more general requirement would be difficult to interpret and implement. Any such requirement would be very intrusive. While a broadly representative committee is desirable, its membership should be determined locally.

Advisory committees, and other mechanisms for continuing public participation, are intended to provide advice and recommendations. A prudent transit authority will thoroughly consider and make appropriate use of the advice and recommendations it receives. However, UMTA does not require transit authorities to be bound by consumer and interest group input concerning any aspect of public mass transportation. Giving any local group a veto over transit decisions would not be consistent with the way the UMTA program is designed.

The NPRM proposed requiring that the recipient pursue a public participation process, like the one required for the initial program submission, for significant changes in the recipient's program. Almost all handicapped commenters addressing public participation favored this requirement; a few transit operators opposed the requirement as adding an unnecessary administrative burden. The Department believes this requirement is necessary, lest a significant alteration in the nature or direction of a recipient's service undermine the utility of public participation. For example, a recipient might follow the public participation process and submit a program for a paratransit system, which UMTA approves. The next year, after a change in leadership, the transit authority might decide that it made more sense to comply with the rule by creating an accessible bus system. In such a situation, the public should not lose its opportunity to participate because the transit authority was making its second, rather than its first, decision on the subject.

The NPRM proposed that recipients respond to comments made during the public participation process. The formulation of this response—that recipients would accommodate significant comments or explain why they did not—is very similar to that used by Federal agencies in rulemaking or in intergovernmental relations matters. Most handicapped commenters who addressed this issue favored the requirement; a few transit industry commenters opposed it, saying that it was an inappropriate intrusion in the local planning process as well as an administrative burden.

This provision of the rule asks no more of recipients than the Department is required to do in a rulemaking. The provision, which has been modified from the NPRM version to stress that recipients are not required to adopt commenters' suggestions, requires responses only to significant comments (i.e., those of some substantive

importance, not comments that are trivial or irrelevant).

Section 27.85 Submission and review of program.

This section is derived from, and modifies, §§ 27.77(a) (1) and (3) and (g)(5)–(7) of the NPRM. Section 27.77(a)(1) provided that all section 3, 5, 9, and 9A recipients would certify that they had in effect a program meeting the requirements of the regulation. Section 27.77(a)(3) provided that this certification would be regarded by the Department as constituting compliance with recipients' obligations under section 504 and section 16.

Section 27.77(g)(5)–(7) provided that, along with its certification, a recipient would have to submit to UMTA a copy of its program, cost estimates, and public comments on the program and the recipient's response to the comments. This material had to be submitted within nine months of the effective date of the final rule. UMTA could reject the program or require the recipient to modify it, but the certification and its accompanying material would be deemed to be accepted if UMTA has not done so within 90 days of its submission.

A substantial number of handicapped commenters said that DOT should require recipients of all DOT funds, not only mass transit funds, to certify their compliance with section 504. This comment appears to be based on a misunderstanding of this rulemaking, which is concerned solely with mass transit services. Other DOT financial assistance programs (e.g., intercity rail service, airport and highway construction) are already covered under 49 CFR Part 27. Most of the relatively few transit authorities that commented on certification acceptance favored the NPRM approach. A few transit authorities also said that submitting the certification and its accompanying material was an administrative burden.

A substantial number of comments from disabled persons and groups representing them opposed certification acceptance, saying that certification acceptance would permit transit authorities to get away with providing inadequate service. In addition, some commenters expressed the concern that because UMTA would have a heavy workload in reviewing recipients' submissions, inadequate programs might go into effect by default if UMTA staff had not had time to review them within 90 days. A number of commenters wanted UMTA, MPOs, or handicapped persons' organizations to review and approve recipient's programs instead of, or in addition to, the proposed certification acceptance by UMTA.

The Department has decided to require recipients to submit their programs for prior approval by UMTA. There are several reasons for this decision. First, the transportation systems that recipients will establish for providing service to handicapped persons will probably be in place for a substantial period of time. The Department believes that it is important that these programs be reviewed carefully to ensure that the service they call for will be fully adequate and consistent with the regulation.

Second, the problem of inadequate programs going into effect by default could be a real one. We recognize that a prior approval approach may have the corresponding problem of delays in program approval and implementation. However, UMTA is committed to employing sufficient resources to minimize any such problems. The regulation establishes a 120-day deadline for UMTA action on programs that are submitted.

Third, the major reason for establishing a certification acceptance approach in any regulation is to reduce administrative burdens for recipients. In a "pure" certification acceptance system, the recipient sends only its certification, and is not required to prepare or submit any additional information. The approach proposed by the NPRM was far from a "pure" certification acceptance approach, and some transit industry comments suggested that the Department should establish something more similar to a pure certification acceptance system.

The Department decided that it was not feasible to take a pure certification acceptance approach. Such an approach would virtually eliminate the accountability of recipients concerning the substance of their programs and the procedures for adopting them. While we might attempt to compensate by increasing accountability measures at the local level (e.g., by requiring the MPO or a handicapped advisory committee to approve the program), it is likely that this would be at least as burdensome as submitting material to UMTA. Given the emphasis on DOT oversight and monitoring in section 317(c), it could also be difficult to reconcile this approach with the intent of Congress.

The Department, therefore, does not believe that it is practicable to reduce the program submission requirement to less than it was in the NPRM. The final rule, though it replaces a certification acceptance approach with a prior approval approach, demands nothing more of recipients than the NPRM with respect to the material required to be prepared and transmitted to UMTA. The content of the recipient's submission to UMTA, specified in paragraph (b), closely follows the proposals of § 27.77(g)(5) of the NPRM. In response to some transit industry comments, UMTA will accept reasonable summaries of public comments in lieu of copies of the actual comments.

A substantial number of transit authorities, state transportation agencies, and other transportation providers commented on the issue of what the deadline should be for recipients to submit their programs after this rule goes into effect. About two-fifths of the commenters believed the NPRM's proposal of nine months was adequate. The remainder favored extending the deadline to a year or more. There was also support in these comments for a provision allowing recipients to apply to UMTA for an extension of up to six months, for good cause, or to automatically receive such an extension if they wanted it.

In response to these comments, the Department has decided to increase the time permitted for recipients to submit their programs to 12 months from the effective date of the regulation. This increase is made in recognition of the legitimate problems transit authorities could have in planning and obtaining local approval of a program before submitting it to UMTA.

However, the Department does not believe it is necessary or advisable to extend the deadline further or permit individual recipients to extend the deadline. Doing so could unreasonably prolong the planning period. Reasonably tight deadlines are one way of ensuring that work does not "slip" unnecessarily. This problem would be especially acute if recipients could automatically extend the deadline by six months. This would effectively make the deadline 18 rather than 12 months, and would still not guarantee timely submission of programs.

Permitting applications to UMTA for "good cause" extensions of the deadline could have two additional negative effects: transit authorities might divert time and effort away from the job of completing their programs to produce justifications of why the programs could not be completed in a timely manner, and UMTA might be faced with potentially difficult, time-consuming decisions to make on extension requests at the same time as other transit authorities were submitting their programs for approval.

Section 27.87 Provision of service.

This section is derived from two paragraphs of the NPRM: § 27.77(f), "provision of service", and § 27.77(i), "disparate treatment". Because the subjects of these provisions are closely related, the Department decided to combine them.

A substantial number of handicapped persons objected to the provision of service paragraph of the NPRM, which stated that recipients must ensure that services are provided to handicapped persons as set forth in the recipient's program. These commenters objected because providing the service set forth in the program might not be the same thing as providing service meeting the service criteria of the regulation.

The Department believes that this concern has been adequately addressed in the final regulation. UMTA will review and approve the recipient's program. UMTA will not approve any recipient's program that does not meet all of the requirements of the regulation, including the service criteria (subject to the limit on required expenditures). Consequently, a recipient providing service as set forth in its program, as approved by UMTA, will be meeting the requirements of the regulation.

The NPRM also required recipients to ensure that equipment is maintained, personnel are properly trained and supervised, and program administration is carried out in a manner that does not permit actual service to fall below the level set forth in the recipient's program. Some comments asked for greater specificity in these requirements, particularly with respect to the maintenance of lift-equipped buses. For the sake of clarity, the final rule spells out these requirements in greater detail. They concern maintenance of vehicles and equipment, provision of sufficient spare vehicles, training of personnel, and provision of sufficient assistance and information concerning the use of service to handicapped users.

Several comments, primarily from handicapped individuals and groups representing them, requested a specific provision concerning interim service. Some of these comments requested the reissuance of the interim accessible service provision of the 1979 DOT regulation. The Department does not believe it is necessary to reintroduce the 1979 provision; moreover, such a specific interim transportation requirement would be too difficult to apply accurately to the choices recipients would make under this rule.

Finally, several commenters requested that the rule include a "maintenance of effort" provision. Section 27.77(g)(8) of the NPRM proposed that the recipient's certification under the July 1981 interim final rule remain in effect until its new program goes into effect. The Department believes that this requirement is sufficient for "maintenance of effort" purposes under this section. Therefore, the final rule provides that, in the time between the effective date of this rule and the recipient's achievement of the full performance level, the recipient's certification under the July 1981 interim final rule—and the service provided pursuant to that certification—must remain in effect.

Most of the relatively small number of comments on the "disparate treatment" section of the NPRM, from handicapped persons and other commenters, favored the retention of this requirement. The Department will retain the requirement, with only minor editorial changes from the language proposed in the NPRM.

Section 27.89 Monitoring.

The NPRM's monitoring provision would have required each recipient to send an annual report to UMTA containing information about transportation services provided, any problems meeting the service criteria in light of the cost cap, the recipient's progress toward meeting its service requirements, any changes in the program, and a description of any actual or expected alterations in service to handicapped persons. Both handicapped persons and their groups and transit authorities objected to this proposal.

The principal objection to the annual report provision from handicapped persons was that the reporting requirement was too passive. What these parties meant by "monitoring," they said, was an active effort by UMTA to conduct compliance reviews of recipients. Anything less would be inadequate from a programmatic point of view and would fail to carry out the intent of Congress.

Most of the transit authority commenters argued that an annual report was administratively burdensome. They suggested that the monitoring or reporting function be carried out in conjunction with section 9 audits or evaluations, the transportation improvement program process, or other existing reporting or monitoring requirements.

The monitoring provision of the final rule responds, in part, to both lines of comment. An annual report will not be required. This will reduce the paperwork burden on recipients. Monitoring will take place, as transit authorities requested, in connection with the section 9 triennial review and evaluation process. As handicapped commenters requested, this review and evaluation will be performed by UMTA personnel, and will constitute, in effect, a compliance review of the recipient's activities with respect to transportation services. In connection with the reviews, UMTA may, of course, request that certain materials be provided by recipients. This will be an "active" monitoring process by UMTA, but will not occur so frequently as to constitute an additional, significant burden upon transit authorities.

In establishing this triennial review process, the Department was concerned that it might not become aware of problems happening in the intervening years unless a complaint were filed with the Department. Consequently, the final rule establishes a "slippage report." If the recipient falls behind its UMTA-approved implementation schedule, or below its approved level of service, the recipient must forward a report to UMTA no later than the anniversary date of the approval of its program. The report would describe the delay or problem, explain the reasons for it, and set forth the recipient's corrective action. On the basis of this report UMTA could, it necessary, undertake a special compliance review or other corrective action.

The Department is concerned that, as UMTA reviews and evaluates the compliance of recipients with their obligations under this regulation, users and other interested members of the public have the opportunity for input. Consequently, as part of its review and evaluation, UMTA will consult informally with persons involved in the continuing public participation mechanism established under § 27.83 of this regulation.

Section 27.91 Requirements for small recipients.

Section 27.77(a)(2) of the NPRM proposed that, instead of following the requirements of the proposed rule applicable to other recipients, recipients of funds only under section 18 of the UMT Act would certify that special efforts were being made in their service area to provide transportation service for handicapped persons.

Section 18 is an UMTA program for rural and small urban areas. The NPRM proposed that the service that section 18 recipients make available to handicapped persons would have to be reasonable in comparison to that provided to the general public and would have to meet a significant fraction of the actual transportation needs of handicapped persons. These

two criteria are substantively identical to those that section 18 recipients were required to meet under the July 1981 interim final rule and the Federal Highway Administration/UMTA rules that previously governed the section 18 program.

Relatively few commenters addressed requirements for section 18 recipients. Many of the state and local transportation agencies that commented supported the NPRM provision. Some of these commenters suggested that the coverage of the provision be expanded to cover section 18 recipients who also receive funds under section 3 or 9 or other recipients serving small cities. For example, commenters suggested that the "small recipients" provision should apply to all recipients with 50 or fewer buses, or who served areas of up to 50,000 or 200,000 population.

Other commenters recommended that the final rule include more stringent provisions for small recipients than the NPRM did. Some of the suggestions for additional requirements included annual recertifications of compliance, additional public participation and planning requirements, application of the six proposed service criteria and cost cap to small recipients, a specific requirement to furnish accessible vehicles, and greater reporting by recipients and monitoring by UMTA to ensure compliance.

The Department believes that the NPRM's basic approach is sound. Section 18 recipients operate diverse services in areas of low population concentration, usually with little administrative staff and budget. It makes sense to establish separate, more flexible, less administration-intensive requirements for these smaller recipients.

Therefore, the Department will retain the certification acceptance approach for small recipients who, unlike their counterparts in larger cities, will not be required to submit or to obtain prior UMTA approval of a program for providing transportation service to handicapped persons. As suggested by some commenters, the Department will make this provision applicable to any recipients who serve only non-urbanized areas, even if they receive UMTA funds from sources other than section 18. The Department did not extend the reach of this section farther, however, since we were not persuaded by the comments that cities of up to 200,000 did not share important characteristics with larger cities with respect to providing transportation service to handicapped persons.

We did not adopt additional or more stringent requirements because doing so would go counter to the objective of fashioning a more flexible, less burdensome set of requirements for small recipients. In addition, some of the suggestions (e.g., annual recertifications) would add paperwork without improving service for handicapped persons.

The Department has, however, responded to concerns about public participation and monitoring by adding new provisions to this section. Following the statutory language of section 317(c), this section will now require small recipients to ensure adequate notice of and opportunity to comment on the recipients' present and proposed activities for complying with this regulation. This requirement also applies to significant changes in the recipient's service. In order to permit UMTA monitoring of the more than 900 small recipients, these recipients will be required to submit brief status reports (a year after this Subpart goes in effect) and updates (every three years thereafter) concerning their service. For section 18 recipients, these reports will be submitted to the designated section 18 state agency, where UMTA personnel will periodically review them. Other UMTA recipients in areas of less than 50,000 population will submit these reports to the UMTA Regional Administrator. Finally, the section specifies that the provision of service (§ 27.87) requirements apply to small recipients as well as to their larger-city counterparts.

Several comments, particularly from handicapped commenters, requested precise definitions for terms such as "reasonable in comparison" or "significant fraction," saying that these terms were too vague. The Department has decided that it would not be appropriate to define these terms more precisely. In order for this section to apply to small recipients with appropriate flexibility, the Department believes that the generality of these terms is advantageous. They constitute minimum service criteria that UMTA can apply, on a case-by-case basis, to the great variety of local situations and types of service that exist in the section 18 program.

Moreover, these terms have governed the section 18 program for several years, and recipients are familiar with them. In the absence of compelling evidence that these terms have caused serious problems that can be remedied by the introduction of regulatory definitions, the Department believes that it is better to leave them as they are.

Section 27.93 Multi-recipient areas.

Several recipients and MPOs from major urban areas having several transit providers requested that the rule include some provision permitting multi-recipient regions to be treated as a single entity for purposes of compliance with the Department's final regulation. The rationale for this request was that, in a major urbanized area with several recipients providing service, it would be very difficult for individual recipients to plan rationally for efficient service to the area's handicapped persons. A combined approach, these commenters reasoned, would permit better planning, a more efficient use of resources, and service that was well-coordinated and easier to use.

The Department agrees that a unified regional approach to transportation for handicapped persons would have important benefits. The Department also believes that it is important that a regional approach has the full support and cooperation of the area's recipients, provides a mechanism that will ensure adequate service and funding for the service, and does not permit recipients to evade their responsibility for complying with the requirements of this regulation. The Department has therefore decided to permit the recipients in a given urbanized area to form a compact for purposes of compliance with this rule. If a compact is not formed, then each of the recipients in the urbanized area is individually responsible for meeting the requirements of the rule.

Section 27. 95 Full performance level.

Section 317(c) of the STAA requires the Department to establish minimum criteria for the provision of transportation service to handicapped and elderly persons. This section prescribes the minimum criteria that each recipient has to meet in order to comply with this Part. For convenience, we use the term "full performance level" to describe the situation of a recipient that is meeting all the criteria that apply to it, subject to the limit on required expeditures.

Timing

Section 27.77(g)(8) of the NPRM provided that the receipient's program should "go into effect" on the first day of the recipient's next fiscal year following the date the recipient was required to submit its certification and program material to the UMTA Administrator.

Approximately equal numbers of commenters took the position that the NPRM's effective date provision was reasonable and the contrary position

that the effective date of recipients' programs should be extended or that a phase-in period should be provided. Another group of commenters sought clarification of the NPRM provision. Finally, a smaller group of handicapped and other commenters said that the total time from the effective date of the regulation to the point where service meeting the criteria was operating was too long.

A number of transit industry commenters also alleged that the transition between compliance with the present § 27.77 and compliance with the NPRM's provisions could be a very large and abrupt one. That is, a transit authority spending at a level equivalent to 3.5 percent of its FY 1983 section 5 funds the year before the final rule goes into effect might have to spend five times that amount the next year in order to meet the service criteria, even with the NPRM's cost limit in effect. This rapid increase itself, these commenters argued, would constitute an undue financial burden.

The Department does not necessarily accept the commenters' estimates of cost increases that would be caused by compliance with this regulation. However, we do recognize that, where an increase in recipient spending would be necessary to comply with this rule, requiring a rapid, abrupt increase in spending levels could create some hardship even though the overall amount of expenditure would not be unreasonable. This consideration, in addition to the comments on the NPRM's effective date provision, has led us to put a phase-in period into this final rule. The phase-in period will permit a gradual, orderly, well-planned transition to the full-performance level.

Commenters had varying suggestions for how long a phase-in period should be, ranging from several months to several years. The Department has chosen a maximum six-year period. The six-year figure derives fromn UMTA's experience with bus procurements. Typically, the expected useful life of a transit bus is twelve years. In six years, it is reasonable to expect, as a general matter, that most transit authorities would be able to replace up to half of their non-accessible buses with accessible buses as part of their normal bus replacement cycles, without having to retrofit older buses. This should be sufficient to permit most recipients to acquire sufficient new vehicles to meet the full performance level.

The phase-in period is intended to be for a maximum of six years. Recipients are required to plan for service at the full performance level at the earliest reasonably feasible time. Depending on the amount of work and time needed to bring the recipient from where it is to the full performance level, UMTA will approve a phase-in period of up to the six-year maximum. The phase-in period approved by UMTA might well be less than the maximum for a recipient who had little left to accomplish to get to the full performance level, however.

The Department believes that it is reasonable to permit the same phase-in period for special service or mixed systems as for accessible bus systems. In addition to maintaining parity among the options available to recipients, the phase-in period is likely to reduce overall, long-term costs of compliance with this regulation.

For example, if all recipients were forced to phase in service at the full performance level within one year instead of within six years of the approval by UMTA of their plan, the 30-year discounted present value of the accessible bus option would rise about $190 million and the comparable cost for paratransit would rise about $270 million.

Service Options

The remainder of § 27.95 establishes the service criteria applicable to various kinds of systems. This section describes how these criteria apply to special service, accessible bus, and mixed systems. Recipients may elect to comply with the regulation by meeting the full performance level for any one of these three approaches. This local discretion to choose the mode of compliance is consistent with the Department's policy, stated in the NPRM, of permitting local areas to choose how they will provide transportation services to handicapped persons.

Generally speaking, transit industry commenters strongly favored this policy, as did some handicapped and other commenters. Providers and users of existing paratransit services also favored local discretion. The majority of handicapped commenters, however, said that local option would not result in adequate, nondiscriminatory service. They argued that accessible bus service should be mandatory. Failure to so require, it was argued, would result in a segregated, "separate but equal," system that would also fail to provide adequate service. A number of handicapped commenters, recognizing that accessible bus systems could not serve the needs of all handicapped persons, suggested that both accessible bus and supplementary special service be required. Finally, a number of handicapped and other commenters said that the final rule should require that light, rapid, and commuter rail systems (particularly new systems) be required to be accessible.

The Department's 1979 regulation on this subject took the approach advocated by many of these commenters. In the Department's experience, this approach was not successful. The high cost of making old rail systems accessible was one of the most important factors leading the Court of Appeals in the *APTA* case to declare that the 1979 rule imposed undue burdens. Also, urban light and rapid rail systems typically cover the same basic geographic service area as the local bus system. Consequently, as long as an accessible bus or special service system provides transportation to disabled persons in the area, disabled persons are not denied transportation. (See discussion of commuter rail in the NPRM accompanying this final rule.) We are aware that bus or other motor vehicle transportation may not be as fast or convenient as rail transportation. However, section 317(c) does not require that service available to disabled persons be the same as service for the general public, and we believe that the rule, as drafted, satisfies our statutory responsibilities.

Where accessible rail systems exist, recipients may use the service these systems provide to help meet their service criteria, whether their service to disabled persons is by accessible bus or special service. See § 27.95(f) and the appendix discussion of it for further information on this point.

The *APTA* v. *Lewis* decision aside, the Department has been impressed by the variety of different local conditions, preferences, and programs in the area of transportation services for handicapped persons, and by the difficulty of forcing all these differing situations into a single, made-in-Washington, mold. The reaction to the 1979 rule, including the 1980 Congressional initiatives to provide greater flexibility to localities, as well as the comments to the docket for this rulemaking, strongly support the proposition that local discretion is essential. Moreover, the statutory and case law does not support the proposition that the Department must mandate mainline accessibility. Of course, facilities of recipients subject to the Architectural Barriers Act of 1968, as amended (e.g., new rail facilities), must be constructed in accordance with accessibility requirements under that law.

Special Service Criteria

There are six service criteria for special service systems. A majority of comments on this subject approved the

service criteria in the NPRM, though many of the comments from handicapped persons objected to the relationship between the criteria and the limitation on required expenditures.

As noted in the discussion of legal issues concerning the rulemaking, the Department does not agree with transit industry comments that the criteria are not legally proper. One of the themes running through transit industry comments on the service criteria was that local transit authorities should have the discretion to decide for themselves the operational issues affected by the service criteria. While the Department favors local discretion, Congress has directed that the Department establish uniform nationwide criteria. Such criteria necessarily constrain local discretion to some extent.

Transit industry commenters also said that applying the service criteria to special service systems "biased" the regulation in favor of accessible bus service. That is, a recipient could comply more cheaply by making its bus system accessible and hence would have an incentive to do so, even if a special service system would provide better service.

The NPRM proposed that 50 percent of a recipient's bus fleet would have to be accessible, and the Department's economic studies of accessible bus systems were based on that proposal. As discussed in greater detail below, the final rule does not establish a specific minimum percentage of accessible buses that a recipient must have. Nevertheless, we believe that the Department's information is useful in estimating regulatory compliance costs. Under the final rule, it is very likely that the average percentage of buses needed to comply with the service criteria would be 50 percent or less. Consequently, the Department's cost estimates for 50 percent accessible bus service are likely to represent a reasonable upper limit of average accessible bus compliance costs under the final rule.

The Department's studies indicate that creating a 50 percent accessible bus system would be less costly, in cities under about 250,000 population, than a special service system meeting the service criteria. In larger cities, the reverse is true, if the special system is a user-side subsidy (e.g., taxi voucher) system. Transit authority-operated paratransit, with its own vehicles and drivers, is the most expensive option in all cases. The Department has modified some of the NPRM criteria in order to reduce the cost differences among the various service options.

We conclude that there is no across-the-board "bias" toward accessible bus service inherent in the Department's regulation. At the same time, we believe that there is nothing improper or unwise about offering recipients and the public a choice among different options of providing service, even though the costs of these modes may differ. We believe it is appropriate for recipients to take all cost and service factors into account in planning the service that they will provide.

A number of commenters, primarily handicapped persons and their groups, advocated additional service criteria. Those most frequently mentioned concerned dwell time (i.e., how long a vehicle remains at a given stop), ride length time, quality of phone service for paratransit (e.g., sufficient phone capacity to handle incoming calls for service in a timely fashion; use of TDDs to facilitate communication with hearing-impaired individuals), service across jurisdictional lines, training for transit personnel, maintenance of facilities and vehicles, transfer frequency, adequate marketing of and publicity for service to handicapped persons, provision for out-of-town visitors and persons with temporary disabilities, and a general requirement for "same or comparable" service.

The Department has incorporated some of these suggestions in § 27.87, "Provision of Service," since it concerns steps that recipients would take to ensure that the service they plan is delivered adequately. Section 27.87 requires, for example, that vehicles and facilities be adequately maintained, that personnel be appropriately trained, that assistance and information be available to persons with vision and hearing impairments and that there be sufficient communications capacity to enable users to get information about and obtain service. The question of service to out-of-town visitors and persons with temporary disabilities is discussed in connection with the service criterion on eligibility.

We decided not to incorporate several of the other suggestions. As noted in the discussion of legal issues, section 317(c) does not require "same or comparable" service. Dwell time, ride length time, marketing and transfer frequency are all legitimate concerns of transit users. However, it would be very difficult to devise meaningful service criteria on these aspects of service that did not involve more detailed "micromanagement" of transit operations or recordkeeping than the Department believes is practical or desirable. In addition, the Department does not believe these factors are as central to the provision of quality service for handicapped persons as the criteria included in the rule.

The Department strongly urges recipients who provide service in a given region to work together to coordinate their service so that jurisdictional lines do not create barriers to the movement of disabled persons, even where recipients do not form a compact under § 27.93. The Department believes, however, that a regulatory service criterion on the subject of interjurisdictional coordination would be neither enforceable nor particularly meaningful.

A number of the service criteria involve relationships between special service and the recipient's mass transit service for the general public. Several commenters asked whether the recipient's rail service was the point of reference. As these comments pointed out, the service characteristics of rail service often differ from bus service. In addition, this rule does not impose any specific service requirements concerning rapid or light rail systems. Special service, which, like bus transportation, uses road vehicles and public highways, is more readily compared to bus service than to rail service. For these reasons, we do not believe it would be appropriate to base service criteria for special service systems on comparisons to rail systems, and the service criteria explicitly refer to bus service. Of course, this refinement of the language of the criteria will not affect the vast majority of UMTA recipients, who have no rail service.

Eligibility

Section 27.77(b)(2) of the NPRM proposed that all elderly and handicapped persons in the recipient's service area who are unable, by reason of their handicap or age, to use the recipient's service for the general public would be eligible to use the recipient's special service system.

A substantial number of comments from handicapped persons, transit authorities and other transportation providers, social service agencies, and other commenters supported the NPRM's criterion. A majority of the transit authority commenters, however, said either that eligibility should be restricted (e.g., to persons with mobility handicaps) or that transit authorities should have the discretion to establish their own criteria for eligibility.

Among the types of eligibility standards mentioned by commenters were so-called functional standards. For example, a transit authority might regard as eligible persons who could not walk ¼ mile, wait outdoors in moderate

temperatures for more than 10 minutes, or negotiate bus steps.

Some transit authority commenters said that the eligibility requirement would force recipients to serve a larger number of people with special service than with an accessible bus system. The result, the commenters said, would be higher costs for special service systems.

Other comments by a smaller number of commenters suggested that elderly persons should be permitted eligibility only if their mobility were limited, that eligibility should be expanded beyond the NPRM criterion, and that there was no objection to the establishment by recipients of appropriate procedures for certifying eligibility.

Eligibility is a key determinant of the capacity and cost of special service systems. For example, the Department's information indicates that approximately 1.4 million persons can be regarded as "severely disabled" (essentially, persons with physical disabilities making them unable to use regular mass transit service). Another six million persons are regarded as "transportation handicapped" (i.e., persons whose disabilities in any way makes their use of transit more difficult, but not impossible). The Department's studies indicate that making these additional persons eligible could increase operating costs of special service systems, on average, about 60 percent, or between $80,000 and $325,000, depending on the size of the city involved. If the Department required all elderly and handicapped persons to be eligible, another 21.9 million persons would have to be accommodated, raising costs even higher.

This being the case, the Department does not believe it would be feasible to broaden the NPRM's eligibility requirement to include transportation for all elderly and handicapped persons. In addition, the Department believes that there is merit to the comment that requiring a recipient to transport all persons who may not be as readily capable of using the bus system as able bodied members of the general public could effectively be so cost prohibitive to remove any real prospect that the recipient would choose a special service system over an accessible bus system.

In this regard, there are a substantial number of persons whose inability to use the bus system for the general public, due to cognitive disabilities, age or illness, would not be helped by making that system physically accessible. For example, the Regulatory Impact Analysis indicates that up to four million mentally or developmentally disabled persons (not included among the 1.4 million persons in the "severely disabled" population referred to in the Analysis) may fall into this category. Inclusion of people in this category could increase special service costs by 10 to 33 percent and could clearly affect the recipient's choice among modes of service.

The Department recognizes that persons with cognitive disabilities also have a need for transportation. Many such persons, however, would be able to use the regular system with appropriate training. The Department encourages recipients to provide such training. It is expected that drivers would also have to be trained to understand, be patient with, and appropriately respond to questions from mentally retarded persons.

Consistent with other parts of this regulation, this provision does not require recipients to provide special service to able-bodied persons with mental disabilities. Recipients may, however, choose to provide transportation to them even though their condition does not render them physically unable to use the bus service for the general public. In this situation, it would be inappropriate for the recipient to count costs for this special service towards the limit on required expenditures.

The final rule, therefore, requires the recipients choosing special service systems to treat as eligible only those persons who, by reason of handicap, are physically unable to use the bus system for the general public. These are the individuals who would be likely to benefit from an accessible bus system.

Section 16 speaks of transportation service for elderly and handicapped persons. This criterion, however, is not intended to make elderly persons eligible for special service solely on the basis of age. As noted above, doing so would substantially increase costs. Moreover, the Department does not believe that it is necessary, under the statute, to require that special service be provided for elderly persons who are, in fact, physically capable of using the regular service for the general public.

Waiting Lists

Section 27.77(c)(6) of the NPRM proposed that there could not be a waiting list for the provision of service to eligible users. Relatively few comments addressed this criterion; most of those that did favored retaining it. Most of the transit authorities commenting opposed the criterion or said they preferred local option concerning waiting lists. Based on the comments, it appears that waiting lists are not a subject of major concern to the transit industry or to consumers; it also appears that relatively few recipients actually use waiting lists. (The GAO study cited in Congress found only 22.)

As a result, the Department has decided not to include a criterion concerning waiting lists in the final rule. It does not appear that waiting lists are a major, central concern on a level with the other subjects of service criteria in the final rule. Like dwell time, ride length time, and other such relevant but relatively less important service characteristics, the subject of waiting lists does not, in our view, warrant a separate service criterion. A specific service criterion on this subject is unnecessary, in any event, given the eligibility criterion and the provision of service requirement.

Response Time

Section 27.77(c)(5) of the NPRM proposed that users of the special service shall not be required to wait for the service more than a reasonable time. The NPRM asked for comment on whether there should be a regulatory maximum waiting period.

Most of the comments on this criterion came from transit authorities and handicapped commenters. Most of the latter favored including a regulatory maximum waiting period; most of the former opposed doing so, saying that this was an issue that should be decided at the local level without a Federal criterion.

Commenters had varying ideas on the appropriate length for a regulatory maximum waiting period. Twenty-four hours was the time mentioned most frequently by commenters. A majority of these comments said that the maximum waiting period should be no more than 24 hours; others said that the maximum waiting period should be no less than 24 hours. Some handicapped commenters recommended shorter maximums, in the one to four hour range. Another suggestion was that the waiting time should not be longer than that encountered by the public generally for regular mass transit.

The Department studied the effect of different response time requirements on recipients' costs. The studies showed that requiring a response time shorter than 24 hours would add considerably to the costs of providing special service. For transit-authority operated paratransit, a shorter response time would increase costs about 70 percent on the average, adding $104,000 to $324,000 to operating costs, depending on city size.

The Department believes that a specific maximum will be easier to understand and enforce than the

"reasonable time" proposed in the NPRM. In a special service system, 24 hours seems a reasonable time for providers to schedule and "package" trips in an efficient manner. We believe that a response time longer than 24 hours could unduly inconvenience users. We also note that prolonged response times were one of the "deficiencies" in current systems mentioned in the legislative history of 317(c). These considerations all favor establishing a 24-hour response requirement.

Restrictions or Priorities Based on Trip Purpose

Section 27.77(c)(4) of the NPRM proposed that use of special service could not be restricted by priorities or conditions based on trip purpose. The preamble to the NPRM noted that this provision was intended to prevent recipients from refusing to provide service for some trip purposes, or providing service for certain purposes only after demand for trips with other purposes is satisfied.

Most handicapped commenters favored this service criterion. Most transit industry commenters opposed it, or recommended that the decision about restrictions and priorities be a matter of local discretion. Other commenters were roughly evenly divided on the issue.

The Department has decided to retain this criterion. The general public can use the recipient's mass transit system at any time that it operates, for any purpose. We believe that it is inappropriate for recipients to administratively limit transportation service for disabled persons to certain purposes. For a transit authority to decide that some trip purposes are more deserving of service than others can involve a kind of paternalism that disabled individuals understandably may resent.

The Department understands the concern of some commenters that, taken literally, this criterion might be thought to foreclose subscription service for work or other essential trips, which our studies show to be a very cost-effective form of special service. The Department does not intend, through this subparagraph, to prohibit recipients from providing this kind of service.

The Department's studies did not directly estimate the costs of providing service without trip purpose restrictions. However, they did include data on so-called "many-to-few" systems, in which transportation service is provided from multiple origin points to a limited number of destinations (e.g., universities, hospitals, employment centers). There are clear differences between a "many-to-few" system (which provides service for any purpose to a limited number of points) and a system with trip purpose restrictions (which provides service for the approved purposes to any point). As noted in the discussion of the trip purpose restrictions criterion in the appendix, a "many-to-few" system would not be consistent with this criterion.

However, cost data about many-to-few systems may serve as a rough surrogate for cost data about systems with trip purpose restrictions. The Department's data indicates that a "many-to-few" paratransit system operated by a recipient would cost about $75–195 thousand less per year than a destination-unrestricted system, depending on city size. The Department does not view this level of potential savings as sufficient to justify eliminating this service criterion.

Fares

Section 27.77(c)(3) of the NPRM proposed that the cost of a trip on the special service would have to be comparable to a trip of similar length, at a similar time of day, to a user of the recipient's service to the general public. The preamble explained that this did not mean the fares had to be identical; rather, the variance between the regular and special service should be relatively small and be justifiable in terms of the actual differences in cost between the two types of service.

A majority of the comments expressing approval or disapproval of the NPRM provision (including most from handicapped commenters) favored it. Some of the handicapped commenters wanted the criterion strengthened, so that it would require special service fares to be no higher than fares for similar trips on the regular mass transit system. The others, including most transit industry comments, opposed the proposed criterion or said that local discretion should be permitted concerning fares. Another sizeable group of comments asked for clarification of what a "comparable" fare was, suggesting that retaining the NPRM language would lead to uncertainty about the meaning of the criterion.

The Department considered retaining the NPRM criterion. This long-established standard is familiar to transit providers and provides a general guideline to recipients and the public and can forestall outlandish fare differentials without involving any potentially arbitrary arithmetical formula. This approach does require some exercise of judgment on a case-by-case basis, however.

The Department also considered a variety of ideas suggested by commenters, such as fares based on a percentage or regular transit fare box recovery, multiples or percentages of regular transit fares, or a specific dollar ceiling. All of these suggestions are likely to be too difficult to apply reasonably under the wide variety of local situations to which the rule must apply. They could also result in handicapped persons having to pay disproportionately high fares in some cases.

The Department also considered comments which said that the charge to the handicapped person from Point A to Point B should be the same, regardless of the mode of service. This approach has the advantages of simplicity and apparent equality. However, the approach could increase net costs of operating a special service system 40 percent or more and, by encouraging marginal trips, increase gross costs as well. This effect could help to "tilt" recipients in the direction of an accessible bus system, contrary to the Department's desire to give recipients an even-handed choice among modes of transportation service.

The Department has decided to retain the "comparable fares" criterion of the NPRM. This approach recognizes the need to keep special service fares within reasonable bounds, compared to regular transit fares. It also recognizes, however, that special service is different from bus service in a number of respects, including convenience of service and cost. Recipients should not have to charge exactly the same prices for different services. While it is necessary to work out the implications of the comparable fares requirement on a case-by-case basis, we believe that the disadvantages of other, less flexible, approaches are more serious.

Hours and Days of Service

Section 27.77(c)(2) of the NPRM proposed that the recipient's special service would have to be available on the same days and during the same hours as the recipient's service for the general public. A majority of transit industry commenters opposed the criterion, or thought that localities should have discretion concerning this service characteristic. A majority of handicapped commenters favored retaining the criterion, and other commenters divided roughly equally.

Commenters opposing this criterion said that it would not be cost-effective to maintain the availability of special service during certain non-peak hours, such as late at night or on weekends.

The Department believes that the cost-effectiveness of service during times of relatively low demand can be improved significantly by the use of user-side subsidy systems to cover those periods. For example, a transit authority that runs a relatively costly paratransit system during peak hours might shut down that system after the evening rush hour and substitute a taxi voucher system.

The Department's national computer model study did not include data from which estimates could be made of the incremental cost impact of this criterion. Neither did commenters present any information useful for analysis on this point. Data from four of the case studies suggests that this criterion could increase costs of a special service system from two to 15 percent in those cities. However, given that the rule includes a limitation on required expenditures by recipients, the inclusion of this criterion will not, in any event, result in undue financial burdens being imposed on transit providers.

Disabled persons, like other members of the public, have use for public transportation on evenings and weekends. The times when service is available is one of the key determinants of the utility of mass transit to its users. Consequently, the Department has decided to retain this criterion.

Service Area

Section 27.77(c)(1) of the NPRM proposed that special service would have to be available throughout the same service area as the recipient's service for the general public. The preamble asked for comment on how the final rule should treat extended commuter service that went well outside the normal service area.

The largest group of commenters on this issued favored a requirement for providing special service within the same area that the system for the general public serves. These commenters included some transit authorities as well as handicapped individuals and groups representing them, social service agencies, paratransit providers, and other members of the public. A few commenters said that the decision about the area served should be left to local discretion.

Almost all handicapped commenters on the issue of "extended" service said that service going beyond the normal service area should be accessible or that special service should be available. Almost all transit authorities said this matter should be left to local decision, or that requirements for service beyond the normal service area should be less stringent. There was also some comment on the question of how the "service area" should be defined. Some commenters favored defining the service area as the urbanized area, or alternatively, the "normal urban area" in which the recipient provides service to the general public. Others asked for clarification of the requirements for special service within the normal service area—did the criterion mean that special service must serve any points within the urbanized area, or did the special service have to serve only points along bus routes? Some transit authorities said the definition should be left to local discretion. A few of these pointed out that certain existing special service systems already serve a larger area than the regular bus system, asserting that a "same service area" criterion could reduce the geographic area now served.

The Department's information shows that permitting recipients to restrict the geographic area they serve to an area smaller than is served by the regular transit system can reduce expenditures. A geographic area-restricted paratransit system operated by a recipient, on average, would cost between $70 and $200 thousand less per year, depending on city size, than a similar system serving the same geographic area as the regular transit system. The corresponding difference for the less costly user-side subsidy approach would range from $20 to $45 thousand annually.

Principally because of this cost differential, the Department seriously considered eliminating or modifying the service area criterion. However, in view of the decision to include a limit on recipients' required expenditures, the Department decided that the cost differential was not sufficient to outweigh the importance of the criterion in ensuring adequate service for handicapped persons. The absence of geographic restrictions on service is among the most important factors making special service genuinely useful for disabled riders. For example, in many localities, the bus system serves a central city and its surrounding suburbs. If the special service system serves only the central city, or provides service only within certain jurisdictional or "zone" boundaries, the ability of a handicapped person to move around the area by mass transit is severely limited.

Consequently, we are retaining this criterion in the final rule. In terms of defining the service area, we have decided to adopt the suggestion to use the normal area served by the recipient's bus system (exclusive of extended commuter runs). This area is the best analog to the area in which service is available to the general public.

We recognize that it is somewhat more difficult for recipients to "draw the map" of their service area than to use the urbanized area as the basis for the service area. The boundaries of the urbanized area, as determined by the Bureau of the Census, are clearly defined. However, the Department's studies indicate that the service areas in which many recipients actually run their bus systems are smaller than urbanized areas, and using the urbanized area definition could force them to expand their service for handicapped persons well beyond the area in which the general public is served. This is not necessary as a matter of equity, and it would increase costs.

Service is required to be "throughout" the service area. Limiting service to bus stops or to areas within a certain distance of bus routes would not, therefore, meet this criterion. With respect to "extended" service, the Department believes, as handicapped commenters argued, that disabled persons should be able to take advantage of "extended" service. At the same time, the Department agrees that requirements for special service outside the normal service area should be less stringent. Therefore, the Department will require recipients to provide service for handicapped persons to only those points (e.g., terminals, bus stops) reached directly by the bus service extending outside the normal service area.

Service Criteria for Accessible Bus Systems

Section 27.77(b)(2) of the NPRM proposed that one of the ways a recipient could comply with the rule was to make 50 percent of its fixed route bus service accessible. Fifty percent of the fixed route service would be deemed accessible when half the buses the recipient used during both peak and off-peak times were accessible. The preamble explained that this meant that 50 percent of the buses "on the street" at any time had to be accessible, adding that this meant that a sufficient number of accessible buses would have to exist in the reserve fleet to ensure that 50 percent of the buses actually operating were accessible.

The preamble also asked two questions with respect to accessible bus service. First, should recipients be required to permit semiambulatory persons to use lifts? Second, how would the service criteria apply to bus service?

As a response to handicapped commenters' requests for 100 percent accessible service, and to recipients' concern that the relatively low cost of accessible bus service "biased" the rule in its favor, the Department considered requiring 100 percent accessible service, which would provide the level of service requested by the handicapped commenters while substantially reducing or eliminating the cost differential between bus and paratransit modes.

Depending on city size, the Department projects that 100 percent accessible bus service would cost between $40 and $420 thousand more per year than 50 percent accessible service, for the average transit authority. While this would reduce the cost differential with paratransit, the Department is not persuaded that it would be cost-effective to require 100 percent accessible service. It is reasonable to believe that, while a 100 percent accessible system would be more convenient for handicapped persons to use, a majority of the persons who would use accessible bus service at all would use a system in which substantially fewer than 100 percent of the buses were accessible. The overall higher costs of 100 percent accessible bus service are themselves a reason for choosing not to require service at this level.

The Department was aware that recipients will have to have some accessible buses in their reserve fleets. The NPRM mentioned this fact, and the Department's cost estimates for accessible bus service have taken it into consideration. The Department is not persuaded, however, that 50 percent accessible bus service is too costly. The Department's data indicates that such service can, in most cases, be provided well within the rule's cost limit.

There were also several comments that accessible bus service would not be fully adequate to meet the needs of disabled persons. These comments pointed out that not all handicapped persons could use accessible bus service, for reasons such as distance from bus stops, inability to use a lift, physical barriers between the bus stop and the user's origin or destination, bad weather, etc.

The Department is aware that not all handicapped persons can use accessible fixed route buses, and we agree that the ideal transportation system for handicapped persons would include both 100 percent accessible fixed route service and a substantial amount of special service. However, given the limitations of Federal and local resources, and the constraints of the *Davis* and *APTA* cases, the Department believes that it is not in a position to mandate an "ideal" system.

Rather, we believe that by giving localities a choice among various approaches that are reasonably effective, even if short of ideal, we will comply with the intent of Congress and improve considerably the services available to disabled persons. An accessible bus system meeting the final rule's service criteria is one of these reasonably effective approaches.

A number of transit authorities said that if 50 percent of the recipient's fleet was accessible, it should be regarded as in compliance, whether or not 50 percent of the buses actually operating on the street were accessible. However, accessible buses sitting in the garage or on the parking lot do not provide transportation services to handicapped persons. Use, as well as ownership, of accessible buses is necessary for the accessible bus option to work. This is as true under the final rule as under the 50 percent requirement proposed in the NPRM. In this connection, it should be remembered that, in conformity with section 317(c), the Department is required to establish criteria for the provision of service, not simply for the possession of equipment.

Some handicapped commenters said that, during off-peak hours, all buses should be accessible, or that the recipient's accessible buses should be used before inaccessible buses (this latter requirement was part of the Department's 1979 rule). It is true that off-peak schedules involve less frequent service. Consequently, off-peak accessible service could be very infrequent. Therefore, the Department encourages recipients to deploy their buses so that as many as possible of the buses in use during non-peak hours are accessible, to make service for handicapped persons more convenient.

However, the Department does not believe that it is appropriate to establish a regulatory requirement to this effect. Such a requirement is less compatible with the service criteria-centered approach of the final rule than the 50 percent accessibility proposal of the NPRM. Also, the deployment of additional accessible buses during off-peak hours is a matter best left to the discretion of local operators.

The final rule does not require that 50 percent or any other fixed percentage of the recipient's buses be accessible. Rather, the final rule requires that the recipient operate, on the street, a sufficient number of accessible buses to meet the other service criteria for bus systems. The Department has decided to take this approach because, consistent with section 317(c), the emphasis of this rule is on meeting service criteria. There is no magic percentage of buses that will ensure that the service criteria are met.

The Department is aware that recipients now operate accessible bus service in two principal ways. The majority do so by making part of their scheduled bus service accessible. However, it is also possible for a recipient to provide "on-call" accessible bus service. That is, a user calls the recipient and says that he would like an accessible bus to be on a particular route at a particular time. The recipient makes sure that the accessible bus is provided.

In the preamble to the NPRM, the Department mentioned such an arrangement as an example of a mixed system. We believe, however, that it is more reasonable to treat such an approach as a type of accessible bus system, since it is based on the use of regular accessible transit buses on regular bus routes.

It is the Department's intention to establish, as Congress intended, a set of uniform national service criteria for transportation service to handicapped persons. This is important for reasons of equity to users and providers alike. Inherent characteristics of various modes of transportation require some modifications in the way the criteria are stated, however.

Three of the six service criteria are met automatically by a scheduled accessible bus system. Scheduled accessible bus systems have no administrative eligibility requirements. They do not restrict or prioritize the availability of service based on trip purpose. Buses meet schedules, rather than arriving in response to a specific request for service. This satisfies the purpose of the response time criterion.

Of the remaining criteria, the first requires service throughout the same days and hours as the recipient's bus service for the general public. This criterion, like its parallel for special service, is designed to ensure that a recipient does not make accessible service available during only a part of the time it makes service available to the general public (e.g., peak hours).

The "reasonable intervals" language, like the requirement that the service be provided "throughout" the same days and hours as service for the general public, responds to comments that the effectiveness of some existing accessible systems has been limited by the irregularity and infrequency of accessible bus service. At the same time, this language avoids the objection of transit industry commenters to very

specific service distribution and scheduling requirements. This language is included in this criterion because intervals between vehicles is a special characteristic of a scheduled bus system not present in demand-responsive modes of service.

Accessible bus service is limited to certain routes, and does not directly serve origins and destinations throughout a circumferential area. The service area for scheduled accessible bus service, therefore, states that service must be provided on all the recipient's bus routes on which a need for accessible bus service has been established through the rule's planning process.

The reference to the planning and public participation process, also unique to this mode of providing service, responds to those commenters who stressed the need for local flexibility in the design of accessible service and the need to avoid a rigid requirement for service on routes on which there is no demand for it.

In an accessible bus system, all passengers use the same vehicle and travel the same routes. Therefore, the differences between bus and special service that led us to require "comparable" rather than the same fares for the latter do not apply in this context. Recipients must therefore charge all passengers, including handicapped persons, the same fare for the same trip (leaving aside, of course, the off-peak half fares required for elderly and handicapped persons by 49 CFR 609.23).

Some of the criteria for on-call accessible bus service are identical to those for special service. The eligibility, response time, and restrictions or priorities based on trip purpose criteria fall into this category. The fares criterion is identical to the fares criterion for scheduled accessible bus service. The "same days and hours" criterion is the same as the first sentence of the corresponding provision for scheduled accessible bus service. The second sentence is dropped because it is not meaningful to talk of "reasonable intervals" in the context of demand-responsive accessible bus service.

The service area criterion is somewhat different than its scheduled accessible bus service counterpart. In the scheduled accessible bus service context, the schedule of accessible buses which run regularly on various routes at various times is a matter for the planning process. In an on-call accessible bus system, however, the need for and scheduling of accessible service is determined by calls requesting such service in each specific instance. Consequently, the statement of the service area criterion for on-call accessible bus service simply requires accessible service to be provided on all the recipient's routes, upon request.

This criterion also addresses a unique feature of on-call accessible bus service by stating that "all the buses needed to complete the handicapped person's trip" must be provided. Obviously, on-call accessible bus service will not be useful to a handicapped person if the first bus he or she needs to get to his or her destination is accessible, but the bus he or she needs to transfer to in order to complete the trip is inaccessible.

Some handicapped and other commenters suggested various additional criteria concerning the use of accessible buses. For example, every other bus could be required to be accessible. There could be requirements governing transfer frequency or trip length.

The "every other bus" criterion would be a surrogate for the "same days and hours" and "same service area" criteria. However, it could be unduly rigid in application, denying recipients and other participants in the planning process the opportunity to concentrate accessible service where it is most needed. In addition, it could be confusing to state the service criteria in a markedly different way for this mode. For these reasons, we decided not to adopt such a criterion. We also decided against including transfer frequency and trip length criteria, believing that these matters are best determined as a part of the local planning process.

One of the most vexing issues concerning accessible bus service is whether there should be a service criterion requiring recipients to permit semiambulatory persons and other standees to use bus lifts. At the present time, transit authority practices, as described in the comments, appear to vary widely.

Virtually all transit industry comments on this issue said that the operator should have the discretion to decide whether semiambulatory persons should be able to use lifts or that the Department should prohibit the use of lifts by such persons. Virtually all the handicapped commenters urged the Department to require recipients to allow semiambulatory persons to use lifts. A few other comments suggested that UMTA sponsor research into lifts that standees can use safely, that the Department require additional safety devices for lifts, or that semiambulatory persons be permitted to use lifts if they sign a waiver of liability.

Both major positions on this issue have merit. It is true, as handicapped commenters pointed out, that unless semiambulatory persons are permitted to use lifts of a recipient who complies through an accessible bus system, these individuals will have no access to public transportation. This is contrary to the intent of the statute and regulation, the commenters assert.

It is also true, as transit industry commenters point out, that at least some kinds of lifts are not designed to accommodate standees. Not all lifts, for example, have handrails a standee can grasp. Some may operate in a fashion that makes retaining one's balance while standing difficult, particularly for some elderly or handicapped persons. Other lifts may enter the bus at a level, relative to the door opening, that could cause a standee of a certain height to hit his or her head on the entranceway. Transit authorities are properly concerned about the safety and legal liability implications of these problems.

The Department does not have, at this time, sufficient information to evaluate the safety implications of requiring recipients to allow semiambulatory persons and other standees to use lifts. Nor are we now in a position to establish design or performance standards, or safety feature requirements, for lifts. Particularly in view of the Department's policy emphasis on transportation safety, we do not believe that it would be advisable for us to require a practice that could create safety hazards for the individuals that the rule is intended to help.

For this reason, the final rule does not include such a requirement. However, the Department will consider further the safety implications of standee use of lifts and determine what, if any, additional steps are appropriate to address this problem.

Service Criteria for Mixed Systems

Section 27.77(b)(3) of the NPRM proposed that recipients could comply with the rule by establishing a mix of accessible bus and special service. The preamble discussion of this proposed section stated that the accessible bus and special service components of the mixed system, taken together, would have to meet all the service criteria. The preamble also suggested that, in a mixed system, the recipient would not have to provide both accessible bus and paratransit service between the same two points, and it asked whether the final rule should contain any requirements concerning transfer frequency.

There was relatively little comment on this provision. Most of these comments did not object to the notion of a mixed system envisioned by the NPRM and appeared to like the flexibility that such systems provide.

A few commenters objected to the preamble's suggestion that accessible bus and special service components of a mixed system would not have to duplicate one another's routes and efforts. The idea of non-duplication, however, is essential to a mixed system. If a recipient could have a mixed system only if it provided both sorts of service everywhere at all times, then there would be little reason for the recipient to establish a mixed system.

The final rule (see amendment to section 27.5) defines a "mixed system" simply as one that provides accessible bus service at certain times in certain areas and special service at other times and/or in other areas. The full performance level for a mixed system is reached when, subject to the overall limit on required expenditures, each component of that system meets the service criteria applicable to accessible bus systems or special service systems, as the case may be.

Comments from handicapped persons emphasized the importance of convenient travel using all components of a mixed system, and most of these comments favored some limitation on the number of transfers that could be required. Most transit industry commenters favored local discretion on this matter.

The Department does not believe that a discrete national limit on transfers is feasible. The variables are too numerous, and the comparison between the mass transit system for the general public and a mixed system for handicapped persons too difficult, to make such a criterion workable in the great variety of local circumstances to which this rule has to apply. On the other hand, we believe that recipients have a responsibility to coordinate the parts of mixed systems to minimize inconvenience to users, including inconvenience related to transfers. Therefore the Department will require the recipient to ensure such coordination.

Section 27.97 Limit on required expenditures.

Section 27.77(d) of the NPRM proposed that no recipient would be required, in order to meet the NPRM's service criteria, to spend more than a certain annual sum. The NPRM set forth two different ways of calculating that sum for comment, both averaged over the current and two previous fiscal years: 7.1 percent of the recipient's annual UMTA assistance, and 3.0 percent of the recipient's operating budget.

Many commenters addressed the cost limitation issue. The largest group of comments, including virtually all those from handicapped commenters as well as members of most other categories (especially social service agencies), opposed the concept of a limitation on recipient costs like that proposed by the NPRM. As a policy matter, these comments asserted, the limit would vitiate the effect of the service criteria and result in inadequate transportation service for handicapped persons. As a legal matter, these comments said, the proposal would be inconsistent with section 317(c). If there were a limitation on required costs for recipients, many of these same commenters said, it should be set at a higher level. Some of the comments recommended setting the limit as high as 30 percent of the recipient's Federal assistance or 15 percent of its overall operating budget.

On the other hand, virtually all the transit authority comments on the subject, as well as several comments in other categories, approved the concept of the limit on required expenditures. However, these commenters said that the limit was too high to avoid the imposition of undue financial burdens.

Many of the transit industry comments suggested that the Department should ensure that recipients be required to spend no more than they would have to spend under the present § 27.77. To accomplish this objective, several comments suggested that the cost limit be established at about two percent of section 9 funds.

Transit authorities' comments about the base for the cost limit were divided. A majority favored a Federal assistance-based approach. Several MPOs and commenters in other categories also favored a Federal assistance-based limit.

One argument that proponents of a Federal assistance-based cap made was that of proportionality. That is, the amount they spend on complying with a Federal regulatory requirement should remain proportional to the amount of Federal assistance they receive.

All handicapped commenters commenting on the subject, plus about a quarter of the transit authority comments and several comments from commenters in other categories, favored an operating budget approach to the limitation on recipient expenditures. Two main arguments were advanced for this preference. First, the recipient's operating budget was viewed as a relatively more stable base for calculating the limit, since it is drawn from a variety of sources and appears less subject to fluctuation than Federal assistance. Second, these commenters view the transit service for handicapped persons as simply one aspect of a transit authority's overall service to the public. From this viewpoint, fairness requires a reasonable portion of the transit authority's overall resources to be devoted to that portion of the service to the public that handicapped persons can use.

A smaller number of commenters, from various categories, favored either letting recipients choose which base for the limit would apply in their case, or calculating both and using the higher figure. Because this approach would involve more paperwork, and create greater uncertainty, than choosing a single cost limit, the Department did not adopt this suggestion.

The Department has decided to adopt a limit on required expenditures. We have done so for a number of reasons. First, under section 504, as interpreted by the courts, the Department cannot impose undue financial burdens on recipients. The limit is designed to prevent such undue burdens.

Second, predictability is important in planning and budgeting for any public expenditure. The provision will ensure that recipients know, and can plan on the basis of, a predictable limit to their cost exposure for compliance with this rule.

Third, the provision will avoid, to a substantial degree, inequities among recipients. From the information available to the Department, it appears that the cost of providing various sorts of service to handicapped persons may vary substantially from recipient to recipient. In the absence of a limit on required expenditures, the compliance cost to one recipient (even among recipients the populations of whose service areas are similar) could be much higher than for another. The limit will help to avoid major discrepancies in the proportion of resources that recipients must devote to transportation for handicapped persons.

In addition, the Department is convinced that the limit will not result in the failure of this regulation to achieve its principal purpose—the improvement of transportation services for handicapped persons, consistent with the Department's service criteria. The Department's studies show that many recipients, including those serving the largest urban populations in the country, should be able to meet all service criteria for less than the cost limit regardless of which approach to service

they choose. By choosing cost-effective alternatives (such as user-side subsidy or coordination/brokerage programs), many other recipients can do so as well. Other recipients will make tradeoffs which still result in substantially improved service; in these situations, the public participation process is available to help determine the most productive allocation of resources.

One alternative to a limit on required expenditures that the Department considered was to provide for individual, case-by-case, "undue hardship" waivers of the requirements of the rule. Some commenters said this approach was preferable to the proposed cost limit because it did not establish an across-the-board "exemption" from the service criteria. This approach has several problems. First, the Department would have to devise neutral, broadly applicable standards for what constitutes an undue hardship or burden. Such standards might well have to include a cost limit-like threshold expenditure level. Also, the lack of clear legal definition of what constitutes an undue hardship could make standard-setting very difficult.

Second, the Department would have to deal with what, based on experience in previous rulemakings, could be a large number of waiver requests. Processing these requests could be a very time-consuming and burdensome job for the Department, leading to substantial uncertainty about and delay in providing the services for handicapped persons. In effect, the Department would be substituting a series of rulemakings of particular applicability for a rule of general applicability. Moreover, this approach would shift the emphasis in decisionmaking about service from local areas to Washington, which is contrary to the Administration's policy.

Third, it would probably be necessary to eliminate or scale back some of the service criteria in order to prevent the overall compliance costs of the rule from becoming too large. This would be undesirable, particularly in that it could result in less improvement of service in those many localities that can meet all the criteria without exceeding the limit on required expenditures.

With respect to the alternatives for the limit on required expenditures and their effects on projected recipient costs, the Department presents the following tables, based on information it gathered in studies made in connection with the Department's Regulatory Impact Analysis (RIA). These figures, and the way they were derived, are discussed in greater detail in the RIA.

TABLE 1.—ANNUAL COSTS OF SERVICE MEETING ALL SERVICE CRITERIA

City size	3.0 limit	7.1 limit	Para-transit	User side subsidy	50 per-sent bus
(1) Less than 250,000	61	75	247	92	35
(2) 250,000 to 500,000	193	184	393	126	160
(3) 500 000 to 1,000,000	506	506	515	155	300
(4) Over 1 million [1]	2,408	3,456	1,016	196	960

[1] Does not include data from New York, Chicago, Los Angeles, Philadelphia, San Francisco, and Boston.

The data in Table 1 are expressed in thousands of 1983 dollars, and represent annual operating and capital costs and cost limit figures for a system serving an average-sized city in each city size category. The accessible bus costs assume a six-year phase-in period and a 20 percent spare ratio. The user-side subsidy costs assume that supplementary lift-equipped vehicle service would be provided for persons unable to use regular taxis. The paratransit (i.e., transit authority-operated paratransit) and user side subsidy figures are projections of the cost of systems in which the service criteria are as close as possible, given the data available, to those required by the final rule. The 7.1 percent cost limit is based on all UMTA assistance in FY 1983. The 3.0 percent cost limit is based on recipient operating costs as shown in the 1981–82 reports under Section 15 of the UMT Act.

becoming too large. This would be

Table 2.—Nationwide, 30-Year Present Value of Compliance Costs

Paratransit	.98
50 percent Accessible Bus	.69
7.1 percent cost limit	2.72
3.0 cost limit	2.37

This table covers all cities, including the six largest, and assumes that all cities chose one option or the other. The numbers are expressed in billions of 1983 dollars and are based on 1983 UMTA assistance and operating budget levels. The cost limits and service figures are computed as in Table 1.

TABLE 3.—DATA FROM SEVEN CASE STUDIES

City	Present costs	Adjust-ed costs	7.1 per-cent limit	3.0 per-cent limit	2.0 per-cent of § 9 limit
Cleveland	3,900	3,119	2,900	3,189	600
Pittsburgh	2,793	2,698	7,980	3,906	668
Seattle	1,218	1,200	2,500	3,200	688
Kansas City (Missouri)	1,079	555	667	783	188
Akron (Ohio)	1,145	242	312	247	88
Hampton (Virginia)	93	103	206	162	58
Brockton (Mass.)	585	245	129	150	36

The figures in Table 3 are expressed in thousands of FY 1983 dollars (except the present costs figures for Cleveland and Seattle (Calendar Year 1983 dollars) and Akron (Calendar Year 1983 dollars). The present costs to which the table refers are the costs of the recipient's existing service for elderly and handicapped persons, whether or not the service meets the criteria of this rule. The adjusted costs are the Department's projection of what it would cost each city to operate a system meeting the service criteria while serving the eligible population defined by the rule. The costs cited are total costs. In the case studies, the systems were credited with all capital costs from 1979–present, and, although annualized, overstate actual compliance costs under the final rule. The 3.0 percent cost limit is based on 1983 total operating expenditures. The 7.1 percent cost limit is based on 1984 section 9 grant apportionments and section 3 capital funds. The 2.0 percent of section 9 limit, suggested by transit industry comments, is shown for purposes of comparison (calculated in FY 1984 funds).

Looking first at the overall, long-term picture (Table 2), the Department's figures show that, over 30 years, the present value of recipients' aggregate maximum cost exposure under the final rule would be about a third of a billion dollars less under the NPRM's 3.0 percent of operating costs limit than under the 7.1 percent of all UMTA assistance alternative. What is more interesting in Table 2 is that the 30-year present value of aggregate compliance costs for either transit authority-operated paratransit or 50 percent bus accessibility is far less than either of the proposed cost limits. (These figures are projections of what the nationwide compliance cost would be if all recipients chose one mode or the other.)

Table 1 projects the annual costs of compliance and cost limits in average-sized cities in each of four city size categories. The 3.0 percent cost limit results in a lower potential cost exposure in city size categories 1 and 4, an equal potential exposure in city size category 3, and a slightly higher potential cost exposure in category 2.

In city size categories 2, 3, and 4, both a user-side subsidy and a 50 percent accessible bus system, meeting all service criteria of the final rule, could be provided for less than either proposed cost limit amount. In each case, the user-side subsidy approach would be less costly. Transit authority-operated paratransit meeting the service criteria, in every case the most expensive alternative, could be provided for less than the cost limit amounts only in cities of more than 1,000,000 population (category 4), though cities in category 3 could come close.

Small cities would have the most difficult time meeting all the criteria for less than their cost limit amounts.

According to Table 1, the cities in category 1 (under 250,000 population) would be able to meet the criteria without exceeding the cost limit only by using an accessible bus system. Even a user side subsidy system's costs would exceed the limit on required expenditures to some extent, and a transit authority-operated paratransit system would exceed the cost limit level substantially.

One of the interesting results of the case studies displayed in Table 3 is that the present expenditures of four of the cities (Cleveland, Kansas City, Akron, and Brockton) are higher than one or both of the proposed limits on required expenditures. These expenditures are not mandated by Federal regulation. It is difficult to argue that expenditures at the cost limit levels proposed by the NPRM would constitute "undue financial burdens" for cities which have already voluntarily exceeded these levels.

Six of the seven cities (all except Brockton) could comply with the all of the final rule's service criteria by spending less than the 3.0 percent cost limit figure applicable to them. Five of the seven cities could comply with all the final rule's service criteria by spending less than the 7.1 percent cost limit figure applicable to them. The exceptions are Cleveland and Brockton. These results suggest that the proposed approaches to limiting recipients' required expenditures are reasonably related to the provision of transportation services meeting the final rule's service criteria. The figures show that cities' costs of compliance do vary substantially, which supports the argument that a cost limit is useful to prevent cities with higher costs (e.g., Cleveland) from suffering substantially higher compliance burdens than other cities.

On the other hand, the 2.0 percent of section 9 funding basis for the limit on required expenditures, recommended by transit industry comments, would fall far short of either the seven systems' current expenditures or the expenditures necessary to meet all service criteria under the final regulation. The 2.0 percent limit amounts for the seven systems average 30.9 percent of the systems' current expenditures. The same 2.0 percent limit amounts average 42 percent of the adjusted compliance costs for the seven systems. It is clear that, if the Department were to adopt the 2.0 percent of section 9 basis for the cost limit, the seven systems could comply with the regulation while providing much less service than they do now or would provide under the 3.0 or 7.1 percent cost limits.

The Department has concluded that the 2.0 percent of section 9 approach to establishing a limit on required expenditures would not be adequate. Congress clearly intended, through section 317(c), that the Department should publish a rule that would result in improved transportation services for disabled persons. The 2.0 percent of section 9 approach is explicitly intended to avoid any required increase in the aggregate resources devoted to such services. It is unlikely that expenditures at this level could improve service as Congress intended. As Table 3 shows, expenditures at this level could drastically reduce services below present levels in many cases.

The Department has decided that of the two proposed approaches to the limit on required expenditures, the 3.0 percent of operating costs approach is preferable. First, the Department is persuaded that the greater likelihood of stability, from year to year, in a figure based on overall operating costs is a significant programatic advantage. This stability should facilitate recipients' planning for service to disabled persons. It should help to avoid fluctuations in that service that would disrupt the transportation opportunities of its users. Second, the overall potential cost exposure to the transit industry is significantly less under this approach than under the 7.1 percent of UMTA assistance alternative, based on 1983 program levels. Not only is this true for the 30-year cost limit level, but it is also true in two of the three city size categories on an annual basis in which the two differ.

In addition, the Department agrees with those commenters who said that service to handicapped persons should be viewed—and funded—simply as one portion of the recipient's overall service to the public. The Department believes that it is equitable to relate the limit on required expenditures to the funds the recipient expends on services for the entire public.

Finally, this way of calculating the cost cap is based on a standardized, readily available source (UMTA section 15 data). This will facilitate administration and monitoring of the cost limit.

We understand the argument, made by proponents of linking the cost limit to UMTA assistance, that the Department should maintain proportionality between Federal funds and expenditures for Federally-mandated service. However, we do not believe that this argument outweights the considerations favoring the 3.0 percent of operating costs basis for the limit on required expenditures.

Some commenters recommended deleting, from the base from which the cost limit is calculated, expenditures specifically for service to handicapped persons, such as the costs of a special service system or the incremental costs of operating an accessible bus system. The basic rationale of this suggestion appears to be that to use these costs as part of the base for calculating the cost limit would be a sort of double counting. We have not adopted this suggestion. The cost limit relates to the overall operating expenses of the recipient for all purposes, including transportation provided to all users. It would be inconsistent with this rationale, and with the idea that service to handicapped persons is simply one facet of service to the public, to base the cost limit on three percent of 97 percent of the recipient's operating expenses. Doing so would also make administering the rule more complicated.

The NPRM proposed that the recipient could average its operating costs for the two previous fiscal years and its projected operating cost for the current fiscal year in order to form the base from which the cost limit is calculated. The rationale of this provision was to permit greater predictability and stability in the cost limit figures (e.g., to smooth out "bumps" in cost limit levels that might be caused by short-term changes in operating costs). Relatively few comments addressed this proposal, and most of them were favorable. The final rule retains this feature.

The preamble of the NPRM also asked for comment on so-called "carryover credit." This idea would involve permitting a recipient which voluntarily spends more than its cost limit in one year to take credit for the overage in subsequent years. For example, a recipient that made heavy capital expenditures in one year, spending $100,000 over its cost limit figure, would be able to comply with the rule the following year even though it spent up to $100,000 less than its cost limit figure.

The majority of the comments on carryover credit, most of which came from transit authorities, favored the concept. Other commenters favored various ways of amortizing capital investments over a period of time. The Department agrees with commenters who expressed concern that crediting the total amount of capital purchases in the year in which the purchases took place would create an uneven pattern in reported expenditures. This could result

in a recipient exceeding its cost limit some years and not others because of capital expenditures, causing fluctuations in the level of service.

As a result, we have decided to require recipients to annualize capital expenditures, over the expected useful life of the item. This requirement is expected to result in less fluctuation and greater predictability of eligible expense levels, as they relate to the limit on required expenditures. This approach will also, we believe, accommodate the concerns of those commenters who favored a "carryover credit" approach.

Section 27.99 Eligible expenses.

Since the rule includes a limitation on the costs recipients are required to incur to comply with the regulation, it is necessary to establish what kinds of expenditures by the recipient may be counted in determining whether the recipient has reached the limit.

Section 27.77(e) of the NPRM said that incremental operating costs of accessible rolling stock, operating costs of special service, capital costs for special service components and accessible rolling stock, payment of expenses of indirect methods of providing service, and incremental costs of training and coordinating service were eligible. Other costs, even if related to service for handicapped persons, were not. For example, if recipients served both eligible handicapped persons and other persons with the same service, then only the portion of the cost of the service attributable to the former could be counted. The preamble to the NPRM added that only expenditures by the recipient itself, and not expenditures by other parties, could be counted.

The latter point was a major focus of comment. Virtually all transit industry commenters said that expenditures by agencies other than the recipient itself should be counted as eligible expenses. These comments said, first, that such expenditures were intended to provide transportation service to handicapped persons. Second, the comment alleged that the cost limitation provision acted, in effect, as a minimum expenditure criterion, and, like the minimum expenditure guideline in the July 1981 interim final rule and its 1976 predecessor, should permit expenditures by other agencies to be counted. Third, the comments said that NPRM's proposal would discourage effective coordination between the recipients' services and those provided by other agencies. The larger number of handicapped commenters addressing this subject were equally united in asserting that only expenses incurred by the recipient itself should be counted.

The Department has concluded that only expenditures by recipients of their own funds should count in determining whether a recipient has reached its limit on required compliance expenditures. This conclusion follows directly from the nature of the limit on required expenditures itself.

The limit's reason for being is to prevent the requirements of this rule from imposing an undue financial burden on recipients. A recipient can suffer an undue financial burden only if it has to expend too many of its own dollars on compliance with the regulation. If a United Fund agency or a state or local public social service agency spends its dollars on transportation services for disabled individuals, the recipient's revenues are not any further depleted or burdened. If a transit authority buys ten accessible buses, the cost it has to incur is not increased by the fact that the local Center for Independent Living has bought a van. In logic and in reality, no one suffers a burden because someone else spends money.

We disagree with the objections of transit industry commenters to this approach. It is true, of course, that the expenditures of other public or private agencies for transportation services for disabled persons have a purpose similar to the purpose of this rule. But this rule imposes requirements and compliance costs only on UMTA recipients. Services provided by other agencies, and funded from other sources, create no additional costs for the UMTA recipients.

To the extent that the comments characterize the limit on required expenditures as a "minimum expenditure" provision, we believe they are mistaken. A minimum expenditure provision would require recipients to spend (or to ensure that they and some combination of other agencies spend) a certain amount of money, regardless of what service is provided.

For example, the Department's analysis projects that an average city of between 500,000 and 1,000,000 population could meet special service criteria through a user-side subsidy system for about $200,000 per year. The limit on required expenditures for such a city would be $506,000. If the cost limit were instead a minimum expenditure requirement, the city would be required to spend another $306,000 per year, notwithstanding the fact that it had already met all service criteria. Obviously, such an approach would penalize recipients who selected an economical mode of compliance with the rule.

The rule establishes minimum criteria for service; recipients can meet these criteria in a variety of ways. Given the variety of means open to recipients to comply with the rule, which can result in compliance costs below the cost limit levels in many instances, we do not believe it fair to say, even figuratively, that § 27.97 creates a minimum expenditure requirement.

We are also unpersuaded that this approach to eligible project expenses will harm coordination efforts. The recipient's program must ensure that service meeting the service criteria is provided to disabled persons. It does not matter who provides this service. That is, while expenditures made by other agencies are not eligible to be counted in connection with the recipient's limit on required expenditures, service provided by other agencies can help to meet the service requirements imposed by this rule. If there is a significant amount of service provided by various public and private agencies in an urbanized area, the recipient may coordinate that service, supplement it as needed to meet the service criteria, and possibly spend a relatively low amount of transit authority funds (see § 27.95(e)). This situation creates a strong incentive, not a disincentive, for coordination of transportation services for disabled persons, since it will help to reduce the cost of compliance for recipients.

The final rule provides that only those expenditures incurred specifically to comply with the requirements of this Subpart are eligible in connection with the limitation on required recipient expenditures. This regulation does not compel any transit authority to expend funds except to comply with its own requirements. The fact that another Federal, state, or local legal requirement or policy choice may result in expenditures beyond those required by this regulation does not convert these additional costs into burdens imposed by this regulation.

Some commenters said that costs related to improving accessibility of rail systems (e.g., facilities and vehicles for light rail and subway systems) should be eligible. This rule, however, imposes no requirements related to rail systems. No recipient has to make any changes in its rapid or light rail system in order to comply with this regulation. Therefore, any costs the recipient incurs to improve its rail system cannot be construed as burdens imposed by this rule, although the costs of improvements to permit the transfer of disabled persons between

accessible rail systems and bus or special service systems can be eligible. (As noted above, service provided on accessible rail systems can help to meet service requirements, however.) The same principle applies to costs incurred by recipients to comply with the Architectural Barriers Act or state or local accessibility laws. These costs are not burdens of compliance with this regulation.

This principle is stated in paragraph (a) and elaborated in paragraphs (b) and (c) of this section. For example, only "incremental" capital costs of accessible buses are eligible (e.g., the extra cost of a lift-equipped bus over the bus without a lift, not the entire cost of the bus). Only the costs of a special service system attributable to transporting persons required to be treated as eligible under this regulation, and not the costs of carrying additional persons (e.g., non-handicapped elderly persons) can be counted.

Several comments from handicapped commenters said that administrative expenses should not be eligible. We do not agree. Ensuring that programs are properly administered is a very important part of ensuring that transportation services are provided effectively. Those administrative expenditures directly related to service to handicapped persons should be counted just as other expenditures for operating a transportation service.

Some handicapped and transit authority commenters mentioned "half-fare" subsidies to elderly and handicapped persons as a cost item, the former opposing considering it as an eligible expense and the latter favoring doing so. The half-fare requirement of 49 CFR Part 609 remains in effect, and we are proposing in the NPRM to incorporate it into this Part. It is clearly a program specifically designed to assist elderly and handicapped persons, which the Department requires recipients to implement. It is therefore reasonable to regard the incremental costs of compliance as eligible, and the Department has decided to do so.

Section 27.101 Technical exemptions.

The Department has drafted this rule with the intent of providing substantial flexibility to recipients. Nevertheless, we realize that there may be a few unusual situations in which application of the general requirements of the rule could prove unduly burdensome or unreasonable. The Department, therefore, has decided to include an exemption provision in the rule. The Department's experience under the 1979 regulation on this subject, as well as under other rules, suggests that it is valuable to have a stated procedure for technical exemptions and standards for decision to guide recipients' applications and the Department's responses to them.

Section 27.103 Alternate Procedures for Recipients in States Administering Section 5, 9, and 9A Programs.

The Department has added a new procedural section for recipients in states which have elected to administer certain UMTA funding programs. The recipients have the same obligations as all other recipients, but they will send their program materials and other submissions to the state rather than to UMTA.

Technical Amendments to Part 27

Part 27, as published in 1979, refers throughout to the American National Standards Institute (ANSI) standards for physical accessibility of structures and other facilities. This reference is now obsolete. For purposes of all of Part 27, the new Uniform Federal Accessibility Standards (UFAS) are now the relevant accessibility standards. The General Services Administration has incorporated the UFAS into its mandatory accessibility standards for Federal and Federally-assisted facilities. These standards are already binding on DOT grantees, and we wish to update Part 27 to refer to them. This should help to avoid confusion.

Therefore, all references to the ANSI standards in Part 27 have been changed to refer to the UFAS. The language of the change to § 27.67, incorporating the principal UFAS reference, is drawn from a Department of Justice model amendment on the subject. The language of the various sections affected by this technical change is not changed substantively. However, we have inserted the word "apparent" in §§ 27.71(a) and 27.73(a) (". . . where there is *apparent* ambiguity or contradiction . . .") to emphasize that the intent of the rule is to read the UFAS and specific provisions of the DOT rule together, and that the one is not intended to allow noncompliance with the other.

When the Department published its section 504 rule in 1979, the section concerning the Federal Aviation Administration's airport programs contained a reference to "jetways." Subsequently, we learned that, like "Xerox" and "Kleenex," "Jetway" is a trade name not properly used in a generic sense. We promised to correct the oversight quite a while ago and, even though this rulemaking has to do with mass transit rather than airports, this seems like a good time to do it.

Comment Period

The Department originally established a 60-day comment period for the September 8, 1983, NPRM, which was scheduled to end on November 8. However, the Department received a number of requests, mostly from handicapped persons and their groups, requesting that the comment period be extended. These commenters suggested that the extension was needed in order to permit commenters—particularly disabled commenters—adequate time to frame their responses to the Department's proposal. The Department did extend its comment period for another 30 days, with the comment period closing on December 8, 1983.

Public Hearings

A number of commenters, primarily disabled persons and groups representing them, requested that the Department hold public hearings about the proposed regulation. In informal rulemaking under 5 U.S.C. 553, public hearings are not required by law. The Department decided that such hearings were not warranted in this rulemaking. The extended comment period gave all interested parties a fair opportunity to present their views, and the 650 persons and organizations who commented appear to represent a broad spectrum of points of view on the issues. Between the comments, and the studies that the Department conducted on transportation services for handicapped persons to provide more information on issues raised by the comments, the Department believes it has obtained the information it needs on which to base a reasonable final rule.

Impact on Small Entities

This rule could have a significant economic impact on a substantial number of small entities. The Department is required to consider and analyze such impacts by the Regulatory Flexibility Act. The small entities potentially affected include small UMTA recipients (including section 18 subrecipients), social service organizations, private transportation providers, and manufacturers of lifts and other specialized equipment used in transportation services for handicapped persons.

Transit systems in rural areas and cities under 50,000 population are not significantly affected by this regulation. These recipients of section 18 funds are subject to a special provision for small recipients, which imposes requirements less stringent and more flexible than those applying to larger cities. The small recipients will have no more substantive

requirements to meet than under present regulations. They will have small additional reporting burdens, though these too are less burdensome than the reporting requirements with which larger systems must comply.

Proportionately speaking, the rule will create the heaviest burdens on cities between 50–200 thousand population. That is, systems in these cities will have the most difficult time meeting the rule's service criteria for relatively low costs. The rule's limit on required expenditures is designed to prevent such systems from incurring undue financial burdens, by limiting required expenditures to 3.0 percent of the recipient's operating costs, as reflected in its section 15 report to UMTA. This "cost limit" device allows recipients to scale down services to those they can provide with a reasonable expenditure of resources.

The rule is likely to have a favorable impact on a number of small businesses, such as lift manufacturers, shops that customize small vehicles for use by handicapped persons, and private providers of transit services to handicapped persons (e.g., taxi cab companies, firms that operate specialized vans). The rule, by requiring more and better transportation for disabled persons, will increase the market for the products and services these businesses provide.

Notice of Proposed Rulemaking on Commuter Rail

The Department made no specific proposals concerning commuter rail systems in the September 1983 NPRM. That NPRM did request comment on what, if anything, the Department should require in the commuter rail area. The Department received few comments on this issue, most of which were from handicapped persons who wanted commuter and other rail systems to be accessible or from transit providers who said there should be no requirements concerning commuter rail.

These comments presented little, if any, data on the need for accessible commuter rail service, the population to be served, or the costs and other advantages and disadvantages of different approaches to commuter rail service. The Department does not have such data of its own, at the present time. In the absence of this information, it would be premature to promulgate a final rule.

Consequently, the Department decided to publish a new NPRM concerning commuter rail. This notice requests comment on specific alternatives for providing commuter rail service to disabled persons. In addition, it requests information concerning the need for and costs of such service. Before making a decision on whether to proceed to a final rule on this subject, the Department also intends to undertake or review studies on commuter rail accessibility, in order to ascertain whether there is a sufficient basis for such action.

This NPRM will also propose incorportation of some portions of 49 CFR Part 609 in 49 CFR Part 27 and to remove the rest of Part 609.

Environmental Considerations: Finding of No Significant Impact

The Department of Transporation finds, under the standards of the National Environmental Policy Act, that the implementation of this rule will not have a significant impact on the human environment. The regulation requires improvements in services for handicapped persons; these improvements will increase the mobility of handicapped persons, but should not have any significant impacts on the environments of communities generally. The economic impacts of the rule are discussed in detail in the Regulatory Impact Analysis.

In connection with its 1979 rule on this subject, the Department produced an Environmental Impact Statement (EIS). With respect to bus systems, the EIS considered the impacts of a 100 percent accessible bus system. (Since this rule does not require 100 percent bus accessibility, its impacts would be smaller than those of the 1979 rule). The 1979 EIS found that, to the extent that lift-assisted bus boardings cause traffic delays, additional carbon monoxide (CO) emissions would occur from the vehicles following the bus. In all cases analyzed, total annual additional CO emissions amounted to a very small fraction of areawide CO emissions. The increase in bus weight due to the lift would result in slightly increased nitrogen oxide (NO) emissions; the increase is estimated at 0.24 percent to 0.40 percent of total roadway NO emissions. The macroscale impact of this increase would be imperceptible. Construction to provide access to fixed facilities would cause short-term increases in suspended particulates only within 100 feet of the construction. These increases were well below EPA standards for suspended particulates.

The Department also considered potential impacts for paratransit systems. The most important air quality impact from paratransit services would be the additional emissions from this new fleet of vehicles added to general urban traffic. Depending upon the vehicles used for the paratransit service and the number of trips served, total CO emissions, if all recipients used paratransit, could vary from about 3,000 to 75,000 tons per year in urban areas across the country. The areawide CO emissions from paratransit would be insignificant compared to the total areawide CO emissions from all vehicles and other sources.

The likely noise impacts from accessible transit systems, such as those from operation of the lift and slightly increased dwell times, were found to be insignificant. Construction activities to make fixed facilities accessible might result in some very short-term impacts with peak noise levels exceeding recommended EPA levels, but not in the hearing loss range. Exposure to noise would be short since the activities creating those noise levels (such as operation of a jack hammer) are short-term and the unprotected passerby would not be in the immediate vicinity for long periods. Mitigation measures such as barrier enclosure or scheduling the work to reduce the number of passersby exposed would reduce the impacts.

For these reasons, we have concluded that there would be no significant impact on the human environment, and we have therefore not prepared an EIS for this rule.

Regulatory Process Matters

This rule is a significant rule under the Department of Transportation Regulatory Policies and Procedures and a major rule under Executive Order 12291. As a result, the Department has prepared a Regulatory Impact Analysis in connection with this rule. The analysis is available for public review in the rulemaking docket.

The Office of Management and Budget has approved, in connection with the NPRM for this rule, the information collection requirements it contains. These information collection requirements are virtually the same in the final rule as they were in the NPRM. The OMB Paperwork Reduction Act number for these information collection requirements is 2132–0530. The current OMB clearance for these requirements expires April 30, 1989.

The Department of Justice has reviewed and approved this rule under Executive Order 12250 and OMB has reviewed and approved the rule under Executive Order 12291.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued this 19th day of May, 1986, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transporation takes the following actions:

PART 27—[AMENDED]

1. The authority citation for Part 27 is revised to read:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142nt. Subpart E is also issued under section 317 (c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

1a. Paragraph (a) of the definition of "Accessible" in § 27.5, in Subpart A of Part 27, in Title 49 of the Code of Federal Regulations, is revised to read as follows:

§ 27.5 Definitions.

* * * * *

"Accessible" means (a) with respect to new facilities, (1) conforming to the accessibility standards referenced in § 27.67(d) of this Part, with respect to buildings and facilities to which these standards are applicable; and (2) with respect to vehicles other moving conveyances, (or fixed facilities to which the standards referenced in § 27.67(d) of this Part do not apply,) able to be entered and used by a handicapped person;

* * * * *

2. Paragraph (d) of § 27.67, in Part 27 of Title 49 of the Code of Federal Regulations, is retitled *"Accessibility Standards"* and revised to read as follows:

§ 27.67 [Amended]

* * * * *

(d) *Accessibility standards.* Effective as of the effective date of this Subpart, design, construction, or alteration of buildings or other fixed facilities in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings or other fixed facilities. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building or other fixed facilities is provided.

(1) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of physically handicapped persons.

(2) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

3. Paragraph (a)(1) of § 27.71, in Part 27 of Title 49 of the Code of Federal Regulations, is amended by removing the last two words of the first sentence and the second sentence. The following language is substituted:

§ 27.71 [Amended]

(a) * * *

(1) * * * accessibility standards referenced in § 27.67(d) of this Part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(2) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(2) of this section.

* * * * *

4. Paragraph (a)(1)(i) of section 27.73 in Part 27 of Title 49 of the Code of Federal Regulations is amended by removing, the last two words of the first sentence and the second sentence. The following language is substituted:

§ 27.73 [Amended]

(a) * * *

(1) * * *

(i) * * * accessibility standards referenced in § 27.67(d) of this Part. Where there is apparent ambiguity or contradiction between the definitions and the standards referenced in § 27.67(d) and the definitions and standards used in paragraph (a)(1)(ii) of this section, the terms in the standards referenced in § 27.67(d) should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(1)(ii) of this section.

§§ 27.71, 27.73, and 27.75 [Amended]

5. In each of paragraphs 27.71(a)(2) introductory text, 27.71(a)(2)(ix), 27.71(a)(2)(xii), 27.73(a)(1)(ii) introductory text, 27.73(a)(1)(ii)(L), and 27.75(a)(1), all of which are in Part 27 of Title 49, Code of Federal Regulations, the words "ANSI standards" are removed, and the following words are substituted: "accessibility standards referenced in § 27.67(d) of this Part."

6. Paragraph 27.71(a)(2)(v), in Subpart D of 49 CFR Part 27, is amended by removing the word "jetways" therefrom and substituting the words "level entry boarding platforms".

§ 27.77 and Appendix B to Subpart D [Removed]

7. Section 27.77, in Subpart D of Part 27 and Appendix B to that Subpart, in Title 49 of the Code of Federal Regulations, are removed.

8. In Part 27, in Title 49 of the Code of Federal Regulations, the words "Mass Transit" are removed from the title of Subpart D.

9. The table of contents for Part 27 of Title 49 of the Code of Federal Regulations is amended by adding the following:

Subpart E—Mass Transportation Services for Handicapped Persons

10. Part 27 of Title 49 of the Code of Federal Regulations is amended by adding the following definitions to § 27.5 thereof, placing them in alphabetical order among the existing definitions of that section:

§ 27.5 [Amended]

* * * * *

"Mixed System" means a transportation system that provides accessible bus service to handicapped persons in certain areas or during certain hours and provides special service to handicapped persons in the other areas or during the other hours in which the transportation system operates.

* * * * *

"Special service system" means a transportation system specifically designed to serve the needs of persons who, by reason of handicap, are physically unable to use bus systems designed for use by the general public. Special service is characterized by the use of vehicles smaller than a standard transit bus which are usable by handicapped persons, demand-

responsive service, point of origin to point of destination service, and flexible routing and scheduling.

* * * * *

11. Part 27 of Title 49, Code of Federal Regulations, is amended by adding a new Subpart E, which reads as follows:

Subpart E—Mass Transportation Services for Handicapped Persons

§ 27.81 Program requirement.

Except as provided in § 27.91(a) of this Subpart, each recipient of UMTA financial assistance under sections 3, 5, 9, or 9A of the UMT Act, which provides transportation services to the general public by bus, shall establish a program meeting the requirements of this Subpart. The program shall ensure provision of service to handicapped persons at the full performance level required by § 27.95 of this Subpart within the time called for by that section. The program shall include milestones describing the progress the recipient shall make each year until it achieves the full performance level.

§ 27.83 Public participation and coordination.

(a) Each recipient required to submit a program under this Subpart shall develop its program through a public participation process that includes, as a minimum, the following steps:

(1) The recipient shall consult, as early as possible in the planning process, with handicapped persons and groups representing them, transportation and social service organizations, concerned state and local officials, and the Metropolitan Planning Organization (MPO). This consultation shall concern the needs for service to handicapped persons in the area served by the recipient, any weaknesses or problems in present service or plans for service, and the types and characteristics of service to be provided under the recipient's program. In connection with this consultation, all cost estimates, plans, working papers, and other information pertaining to the recipient's program planning and service for handicapped persons shall be made available to all interested persons.

(2) The recipient shall provide a public comment period of at least 60 days upon the recipient's proposed program.

(3) The recipient shall hold at least one public hearing, to take place during the public comment period. Notice of the hearing shall be provided no fewer than 30 days before its scheduled date. The hearing shall be held in a facility accessible to handicapped persons, and the recipient shall take appropriate steps to facilitate the participation of handicapped persons in the hearing, including persons with impaired visiion or hearing.

(4) The recipient shall ensure that all notices and materials pertaining to the program, comment period, and public hearings are made available in a form that persons with vision and hearing impairments can use.

(b) The recipient shall coordinate the development of its program with the MPO and submit its proposed program to the MPO for comment at the same time as the proposed program is made available for public comment.

(c) The recipient shall make efforts to accommodate, but is not required to adopt, significant comments on its proposed program made by the MPO and by the public, as part of the public participation and coordination process. The recipient shall make available to the public, no later than the time it adopts a program for transmittal to UMTA, a response to significant comments. This response shall include the recipient's reasons for not accommodating significant comments from the MPO and the public.

(d) All recipients subject to the program requirement of § 27.81 shall provide a mechanism for continuing public participation in the development and operation of its system of transportation for handicapped persons. The mechanism shall ensure consultation, with respect to planning, implementation, and operation, with handicapped persons, available advocacy groups of handicapped persons, public and private social service agencies, public and private operators of transportation services for handicapped persons, and other interested persons.

(e) Before making significant changes to its program, the recipient shall follow the public participation process outlined in paragraphs (a)–(c) of this section and secure UMTA approval of the altered program as provided in § 27.85 of this Subpart for initial program submissions.

§ 27.85 Submission and review of program.

(a) Each recipient required to establish a program under § 27.81 of this Subpart shall submit the following materials to the appropriate UMTA Regional Administrator within 12 months of the effective date of this Subpart:

(1) A copy of the program;

(2) The comments of the public (including handicapped persons and the MPO) on the program, together with the recipient's responses to these comments, or summaries thereof;

(3) Documentation of the projected costs of implementing the recipient's program, the costs of alternatives considered by the recipient, the projected amounts of the limitation on required expenditures for the recipient, and the rationale for any reduction of service quality below a level meeting fully the service criteria of § 27.95 (b), (c), or (d), as applicable.

(b) UMTA shall complete review of each recipient's program submission within 120 days of receiving it. UMTA may extend this review period; if UMTA does so, UMTA shall send the recipient a letter, before the end of the 120-day period, explaining the reasons for the extension and providing an estimated date for the completion of review.

(c) After UMTA has completed its review on each recipient's program submission, it shall notify the recipient, in writing, that the program is either approved as submitted, requires certain specified changes in order to be approved, or is disapproved. If the program is not approved as submitted, the notification shall set a time, not less than 30 nor more than 90 days from the date of the notification, within which the recipient shall submit a modified program to UMTA for approval. UMTA may condition approval of the resubmitted program on specified changes to its content or additional public participation activities.

§ 27.87 Provision of service.

(a) Each recipient shall, at all times, provide the service called for by its program, as approved by UMTA, or under its certification pursuant to § 27.91, as applicable, to all eligible handicapped persons.

(b) The recipient's obligation to ensure the provision of such service includes, but is not limited to, the following:

(1) Ensuring that vehicles and equipment are capable of accommodating all the users for which the service is designed, and are maintained in proper operating condition;

(2) Ensuring that sufficient spare vehicles are available to maintain the levels of service called for in the program, or as provided under the § 27.91 certification;

(3) Ensuring that personnel are trained and supervised so that they operate vehicles and equipment safely and properly and treat handicapped users of the service in a courteous and respectful way; and

(4) Ensuring that adequate assistance and information concerning the use of the service is available to handicapped persons, including those with vision or

hearing impairments. This obligation includes making adequate communications capacity available to enable users to obtain information about and to schedule service. In the case of a scheduled accessible bus system, this obligation also includes providing information on bus schedules and other sources of information about the service concerning which runs are made with accessible buses.

(5) Ensuring that service is provided in a timely manner, in accordance with scheduled pickup times.

(c) Notwithstanding the provision of any special service to handicapped persons, a recipient shall not, on the basis of handicap, deny to any handicapped person the opportunity to use the recipient's system of mass transportation for the general public, if the handicapped person is capable of using that system. Nor shall a recipient otherwise discriminate against a handicapped person in connection with the provision of its transportation service for the general public.

(d) In the time between the effective date of this Subpart and the recipient's achievement of the full performance level established by § 27.95, service at least at the level provided pursuant to the recipient's certification under former § 27.77 of this Part (46 FR 37488; July 20, 1981), as amended, shall remain in effect.

§ 27.89 Monitoring.

(a) In connection with the triennial section 9 review and evaluation of the recipient's activities conducted by UMTA under 49 U.S.C. 1607a(g)(2), UMTA shall review and evaluate compliance of the recipient with this Subpart and its approved program for providing transportation services to handicapped persons.

(b) With respect to any recipient required to submit a program under § 27.81 of this Subpart, but which is not subject to a section 9 triennial review audit, UMTA shall conduct a triennial review and evaluation of the recipient's compliance with this Subpart and its approved program for providing transportation services to handicapped persons.

(c) If the recipient has fallen behind its approved schedule for implementing service to handicapped persons or has fallen below its full performance level for that service, the recipient shall submit a report to the appropriate UMTA Regional Administrator on the annual anniversary date of the approval of its program. The report shall describe the problem or delay experienced, explain the reasons for it, and set forth the corrective action the recipient has taken or is taking to ensure that its approved implementation schedule or its full performance level is met.

§ 27.91 Requirements for small recipients.

(a) This section applies to all recipients which provide service to the general public only in areas of 50,000 population or less. Recipients in this category shall follow the requirements of this section instead of the other requirements of this Subpart, except that § 27.87 shall apply to recipients in this category.

(b) Within 12 months of the effective date of this Subpart, each recipient shall certify that special efforts are being made in its service area to provide transportation that handicapped persons, unable to use the recipient's service for the general public, can use. This transportation service shall be reasonable in comparison to the service provided to the general public and shall meet a significant fraction of the actual transportation needs of such persons within a reasonable time. Recipients who have a current certification to this effect are not required to recertify.

(c) Within nine months of the effective date of this Subpart, each recipient shall ensure that handicapped persons and groups representing them have adequate notice of and opportunity to comment on the present and proposed activities of the recipient for achieving compliance with the requirements of paragraph (b) of this section. This notice and opportunity for comment shall take place before the submission of the certification required by paragraph (b) of this section and the report required by paragraph (d) of this section. Each recipient shall also ensure that there is adequate notice and the opportunity for public comment on any subsequent significant changes to its service for handicapped persons.

(d) Within 12 months of the effective date of this Subpart, each recipient shall submit a status report including:

(1) A description of the service currently being provided to handicapped persons, as compared to the service for the general public;

(2) Copies or a summary of the comments of handicapped persons received in response to the opportunity for comment;

(3) A statement of any plans to modify the service significantly; and

(4) A statement of the resources devoted to the service for handicapped persons.

(e) Each recipient shall submit update reports concerning its service for handicapped persons. The recipient shall provide such a report every three years, on a schedule determined by UMTA. Each report will include the following information:

(1) A description of the service currently provided to handicapped persons, as compared to the service for the general public;

(2) Any significant modifications made in the service since the previous report, or planned for the next three-year period;

(3) Copies of a summary of the comments on any significant changes made in the service since the previous report; and

(4) A description of the resources that have been devoted to service for handicapped persons each year since the previous report and that are planned to be devoted to this purpose in each of the next three years.

(f) All certifications and reports under this section shall be submitted to the designated state section 18 agency or, for recipients who do not receive section 18 funds, to the appropriate UMTA Regional Administrator.

§ 27.93 Multi-recipient areas.

(a) This section applies to any multi-recipient area; i.e., an urbanized area including two or more recipients required to establish a program under § 27.81 of this Subpart.

(b) The recipients in a multi-recipient area may enter into a compact for purposes of compliance with this Subpart. The compact shall meet the following standards:

(1) The compact shall establish a cooperative mechanism among the recipients to ensure the provision of combined and/or coordinated service to handicapped persons that meet all requirements of this Subpart.

(2) The compact shall ensure the provision and sharing of funding adequate to provide such service.

(3) The compact shall include a reasonable dispute resolution mechanism concerning funding and service matters.

(4) The compact shall be a formal written document, signed by all participating recipients.

(c) In order for UMTA to recognize the compact as the means through which recipients in the multi-recipient area will comply with this Subpart, the members of a compact shall submit a copy of the signed compact to the appropriate UMTA Regional Administrator within six months of the effective date of this Subpart. Following such timely submission, UMTA shall acknowledge receipt of the compact within 30 days and then regard the members of the compact as if they constitute a single

recipient for purposes of all requirements of this Subpart.

(d) The deadline for the submission of a program under § 27.85 by a multi-recipient area compact shall be 12 months from the date on which the copy of the compact is acknowledged by UMTA under paragraph (c) of this section.

§ 27.95 Full performance level.

(a) *Scope and timing.* Each recipient shall provide transportation service to handicapped persons at the full performance level. The full performance level is defined as meeting the criteria set forth in either paragraph (b), paragraph (c), or paragraph (d) of this section, subject to the limit on required expenditures provided for in § 27.97 of this Subpart. The recipient shall meet this requirement as soon as reasonably feasible, as determined by UMTA, but in any case within six years of the initial determination by UMTA concerning the approval of its program.

(b) *Criteria for special service systems.* The following minimum service criteria apply to special service systems:

(1) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public shall be eligible to use the recipient's special service.

(2) *Response time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(3) *Restrictions or priorities based on trip purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the special service.

(4) *Fares.* The fare for a trip charged to a user of the special service system shall be comparable to the fare for a trip of similar length, at a similar time of day, charged to a user of the recipient's bus service for the general public.

(5) *Hours and days of service.* The special service shall be available throughout the same hours of days as the recipient's bus service for the general public.

(6) *Service area.* The special service shall be available throughout the circumferential service area in which the recipient provides bus service (exclusive of extended express or commuter bus service) to the general public. The recipient shall also ensure that service to points outside this service area served by the recipient's extended express or commuter bus service shall be available to handicapped persons.

(c) *Criteria for accessible bus systems.* The following minimum service criteria apply to accessible bus systems:

(1) *Number of buses.* The recipient shall operate on the street a number of accessible buses sufficient to meet the other service criteria of paragraph (c)(2) and/or (3) of this section, as applicable.

(2) *Criteria for scheduled accessible bus systems.*

(i) *Hours and days of service.* Scheduled accessible bus service shall be available throughout the same hours and days as the recipient's bus service for the general public. The service shall be provided at reasonable intervals that make practicable the ready use of the accessible bus service by handicapped persons.

(ii) *Service area.* Accessible bus service shall be provided on all the recipient's bus routes on which a need for accessible bus service has been established through the planning and public participation process set forth in § 27.83.

(iii) *Fares.* The fare for a trip charged a handicapped person using an accessible bus shall be no higher than the fare charged other users of the recipient's bus service for the same trip. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on accessible buses.

(3) *Criteria for on-call accessible bus service.*

(i) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's bus service for the general public shall be eligible to use the recipient's on-call accessible bus service.

(ii) *Response time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(iii) *Restrictions or priorities based on trip purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the on-call accessible bus service.

(iv) *Fares.* The fare charged a handicapped person using an accessible bus shall be no higher than the fare charged other users of the recipient's bus service for the same trip. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on accessible buses.

(v) *Hours and days of service.* On-call accessible bus service shall be available throughout the same days and hours as the recipient's bus service for the general public.

(vi) *Service area.* On-call accessible bus service, including all buses needed to complete each handicapped person's trip, shall be provided, upon request, on all the recipient's bus routes.

(d) *Criteria for mixed systems.* The service criteria of paragraphs (b) and (c) of this section apply to the special service and accessible bus components of the system, respectively, for the portions of the service area, and/or days and times, in which each operates. The recipient shall ensure that the accessible bus and special service components of the mixed system are coordinated (including transfers between the components) so that inconvenience to handicapped users of the mixed system is minimized.

(e) *Services by other agencies and modes of transportation.* In meeting the service criteria, the recipient may use services provided, and funded, by agencies other than the recipient, and services delivered through other modes of transportation, if the services provided by the other agencies or through other modes of service are part of a system of transportation coordinated by the recipient.

§ 27.97 Limit on required expenditures.

(a) *Calculation.* To determine its limit on required expenditures for a given fiscal year, the recipient shall calculate 3.0 percent of its total annual average operating costs (as reported to UMTA in compliance with requirements under section 15 of the Urban Mass Transportation Act, as amended) it reasonably expects to incur in the current fiscal year and did incur during the previous two fiscal years.

(b) *Effect.* A recipient is not required, in any fiscal year, to spend more than the amount of its limit on required expenditures for that fiscal year in order to comply with this Subpart, even if, as a result, the recipient cannot provide service to handicapped persons that fully meets the service criteria specified by § 27.95 (b), (c) or (d), as applicable. Each recipient shall, in all cases, comply with § 27.95 (b)(1) or (c)(3)(i), as applicable.

(c) *Consultation.* In determining how to reduce service levels in order to avoid exceeding the limit on required expenditures, the recipient shall consult with handicapped persons and the public through the public participation mechanism established under § 27.83(d) of this Subpart.

§ 27.99 Eligible expenses.

(a) Only expenditures by the recipient of its own funds, specifically to comply with the requirements of this Subpart, are eligible to be counted in determining whether the recipient has exceeded its limitation on required expenditures.

(b) The expenditures by the recipient that may be counted in determining whether the recipient has exceeded its limitation on required expenditures are limited to those listed in this paragraph.

No other expenditures may be counted for this purpose.

(1) Capital and operating costs for special services systems;

(2) Incremental capital and operating costs for accessible bus systems;

(3) Administrative costs directly attributable to coordinating services for handicapped persons.

(4) Incremental costs of training the recipient's personnel to provide services to handicapped persons.

(5) Incremental costs of compliance with 49 CFR 609.23.

(6) Incremental costs of construction or modification of facilities to enable handicapped persons to transfer readily between accessible bus or special service systems and accessible rail systems, provided that such construction or modification is part of the recipient's program approved under § 27.85 of this Subpart.

(c) With respect to service provided to both handicapped persons eligible to receive service under this Subpart and to other persons, only expenditures attributable to the transportation of the eligible handicapped persons may be counted in determining whether the recipient has exceeded its limitation on required expenditures.

(d) Expenditures for the purchase of vehicles and other major capital expenditures shall be annualized over the expected useful life of the item. Only the portion of the expenditure attributable to a given fiscal year may be counted in determining the recipient's eligible expenses for that year.

§ 27.101 Technical exemptions.

(a) A recipient may request a technical exemption from any provision of this Subpart. Such a request shall be made in writing, to the Administrator of the Urban Mass Transportation Administration, through the appropriate UMTA Regional Administrator. The request may be made in conjunction with the submission of the recipient's program under § 27.85 of this Subpart.

(b) The Administrator may grant the request if—

(1) The recipient has demonstrated that special local circumstances, not contemplated or taken into account in the rulemaking establishing this Subpart, make it unduly burdensome or unreasonable for the recipient to comply with a generally applicable requirement; and

(2) The recipient has agreed to take action which the Administrator determines will result in substantial compliance with this Subpart despite the grant of a technical exemption from a particular provision of this Subpart.

(c) The Administrator may grant, partially grant, or deny any request for a technical exemption. The Administrator may also place any reasonable conditions upon the grant of a technical exemption. The Administrator's actions are subject to the concurrence of the Assistant Secretary for Policy and International Affairs.

§ 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs.

(a) If a state has elected to administer UMTA's section 5, 9, and 9A programs for UMTA, the recipient shall submit the materials required by §§ 27.85, 27.89(c), 27.91(f), and 27.93(c) of this Subpart to the designated state agency rather than to UMTA. The designated state agency shall act for UMTA to review and approve, as required, the materials submitted by the recipients. The time limits and procedures imposed on UMTA in these provisions shall apply to the designated state agencies.

(b) After the designated state agency has approved the recipient's program under § 27.85, it shall certify to UMTA that the recipient is in compliance with this Subpart. This certification is due to UMTA within 30 days of the approval of the program and it shall state whether the recipient has entered into a compact under § 27.93.

§§ 27.105–119 [Reserved]

Appendix to Subpart E

The material in this appendix describes the Department's interpretation of the provisions of this regulation. (For additional information concerning these provisions, please refer to the preamble published with this regulation in the **Federal Register.**) This material may be supplemented or modified, in the future, by additional guidance from the Department, including UMTA, as questions arise during the implementation of the regulation.

Section 27.81 Program requirement.

This section directs UMTA recipients who receive funds under sections 3, 5, 9, or 9A; serve the general public; and operate a bus system in an urbanized area to establish a program, consistent with this regulation's requirements, for providing transportation services to handicapped persons. Each of the qualifications of this requirement is intended and important.

Recipients receiving funds only under another section (e.g., section 8 planning funds; section 18 small urban and rural transportation program funds) do not need to create a program.

Recipients who do not provide federally-assisted transportation services at all (e.g., an MPO that receives section 9 funds but merely passes them through to a transit provider) are not required to establish a program. "Providing transportation services," in this context, is not limited to actually operating a fleet of the recipient's own vehicles with the recipient's own personnel. For example, private provider may operate federally-assisted service (e.g., as part of a private-sector participation initiative). The recipient would be providing transportation service for purposes of this section, and be responsible for ensuring that service to handicapped persons that fully meets regulatory requirements is provided, directly or through the private provider.

Only recipients providing transportation services to the general public (as distinct from providing services only to elderly or handicapped persons) are required to establish a program. Even though section 16(b)(2) funds are taken from section 3 appropriations, agencies receiving funds solely under this program are not covered by this section's requirements.

Recipients under other UMTA funding programs, if they serve only elderly and/or handicapped persons, are exempted from this requirement for the same reason. Also, recipients who do not provide transit services "by bus" (i.e., rail-only operators) are not covered by this requirement.

Section 27.91(a) creates a separate, simpler system through which section 18 recipients and other recipients in non-urbanized areas (even though they receive some section 3,5,9, or 9A funds) will comply with the requirements of this Subpart. That section, and not § 27.81, applies to recipients providing service only in areas of less than 50,000 population.

The recipient's program must provide for meeting the full performance level for services to handicapped persons within the phase-in period provided for by § 27.95. The program must include "milestones": statements of the progress a recipient will make each year toward the full performance level.

For example, a recipient planning to comply by making its buses accessible would set forth how many accessible buses it would have by the end of year one, year two, etc., and to what degree it would meet each of the various service criteria at each stage. Similar items would be presented for other needed tasks, such as driver training, structural improvements to facilities, or information services. In its review of recipients' programs, UMTA will consider whether the milestones are realistic and provide for an appropriately phased build-up to the full performance level.

These milestones are very important, and recipients should think them out very carefully. The milestones in a recipient's program, once they are approved by UMTA, became the benchmarks against which the recipient's compliance is evaluated during the phase-in period. That is, the milestones to which a recipient commits itself during the phase-in period, like the full performance level subsequently, are the levels of performance that the recipient must meet to be considered in compliance.

The recipient has to include other information in its submission, along with the program itself. Much of the required information is listed in § 27.85. Other material that should be submitted, if applicable, concerns the continuing public participation mechanism, the criteria and procedure for

determining eligibility, and accessible bus system routing and scheduling.

Section 27.83 Public participation and coordination.

The requirements for this section apply only to those recipients which must submit a program, since the section mostly pertains to the public participation and coordination process involved with preparing and adopting a program. The requirements of this section are minimum requirements. Recipients may go beyond them (e.g., a comment period longer than 60 days).

Subparagraph (a)(1) requires recipients to consult, as early as possible in the planning process, with interested people and groups. The idea of early consultation is important. Handicapped persons and groups, transportation and social services agencies, state and local officials, and the Metropolitan Planning Organization (MPO) should be regarded as partners in the planning process from the outset, not simply as commenters upon a proposed program that is already fully developed by the recipient.

The recipient's consultation should deal with the entire spectrum of concerns involved in planning service for handicapped individuals. Subsection (a) (1) mentions specifically service needs, weaknesses or problems in present service or existing plans for service, and the types and characteristics of service to be provided under the recipient's program.

Some recipients may already have a public participation mechanism in place, such as an advisory committee. The recipient may use such an existing mechanism. However, the recipient should ensure that all relevant parties have the opportunity to be included in the consultation process, even if they have not regularly participated in the advisory committee. For example, a recipient may have an advisory committee with membership drawn from several, but not all, organizations concerned with disability issues in the area, but in which the MPO is not normally represented. The recipient could base its consultation required by this subparagraph on the advisory committee, being sure that members of the additional organizations of disabled persons, social service agencies, and the MPO also were consulted and had the opportunity to participate.

The last sentence of subparagraph (a)(1) provides that cost estimates, plans, working papers and other information pertaining to the recipient's program and service for handicapped persons must be made available to all interested individuals and groups. In order to participate constructively in the planning process, those parties with whom the recipient is working need to have access to the information available to and the thinking of members of the recipient's staff. Information relevant to service cannot be viewed as "classified" or withheld from interested persons. This requirement also applies to the continuing public participation process (e.g., relevant information must be provided to an advisory committee).

In the remainder of this section, there are serveral references to the recipient's "proposed program." A proposed program is a document that the recipient has developed through its planning process. It should reflect the view of the recipient concerning such key subjects as the type and characteristics of service, schedule for implementing the service, and the funding of the service. The proposed program should not be merely a general request for views or represent an immutable decision by the recipient on what it will provide. The proposal should be sufficiently thorough and detailed to permit commenters and speakers at the public hearing to make informed criticisms and suggestions for improving the recipient's plans.

Subparagraph (a)(2) requires the recipient to provide a public comment period of at least 60 days on the proposed program. During the 60-day comment period, subparagraph (a)(3) provides that the recipient shall hold at least one public hearing. Notice of the hearing must be provided at least 30 days before the date on which the hearing is scheduled. The recipient could, for example, in notifying the public of the comment period, set a date, at least 30 days later, for the hearing, thereby avoiding the necessity for a second notice.

All hearings must be held in an accessible facility, and, if it is reasonably anticipated that persons with vision or hearing impairments will participate in the hearing, the recipient must take appropriate steps to facilitate their participation. For example, the recipient would have to ensure that an interpreter for deaf persons, or an individual to help communicate information contained on charts, graphs, or other visual aids to blind persons, was present at the hearing. The recipient should also select a time and place for the hearing that maximizes convenience to handicapped persons.

The regulation does not require that the public hearing involved be dedicated solely to the recipient's proposed program. Adequate time should be provided to ensure that all interested parties who wish to participate in the hearing have the opportunity to do so. The recipient must ensure that participation concerning the recipient's proposed program is not deterred by such techniques as the placement of its discussion at the end of a lengthy and time-consuming agenda. The program need not be the only, but should be the primary, matter discussed at any hearing held to meet the requirements of this section.

Subparagraph (a)(4) provides that the recipient shall ensure that all notices and materials pertaining to the program, comment period, and public hearings are made available in a form that persons with vision and hearing impairments can use. This implies notice being given in print (i.e., notices, placards in buses, newspaper advertisments, etc.) and by oral means (e.g., radio spots). For written materials other than notices of the comment period and the hearing, such as program documents and supporting information, the recipient should ensure that there are means of assisting visually handicapped individuals in learning the contents of these materials. It should be emphasized that this does not mean the recipient's personnel necessarily have to be used for this purpose. The recipient could also work with local voluntary or social service organizations to ensure that this service is provided.

Paragraph (b) requires the recipient to coordinate the development of its program with the MPO as well as to submit the proposed program to the MPO for comment at the same time as it is submitted to the public. The MPO, and concerned state and local governments, are intended to work with the recipient throughout the planning and implementation of the program.

Paragraph (c) of this section is the so-called "accommodate or explain" requirement. It should be emphasized that this paragraph does not require a recipient to make a point-by-point response to every comment. Nor does it require a recipient to agree with or adopt any or all comments it has received. The recipient is required to respond to "significant" comments it receives. That is, the recipient should respond to comments raising important substantive issues about the proposed program. Nonsubstantive or trivial comments need not receive responses.

Recipients' responses to comments may be relatively brief, so long as they give cogent reasons for the recipient's decision not to adopt a particular comment, to make a change requested by a comment, or to respond to a concern expressed by a commenter in a way different from that a commenter suggested.

The recipient may respond to comments in a variety of ways, such as letters to commenters, a preamble to the final program submitted to UMTA and made available to the public, or a separate document made available to all interested commenters and other members of the public. This document or documents should make clear to the public and to UMTA which commenters (and/or categories of commenters, in the case of individuals) made certain comments and the reasons for the recipient's responses.

Paragraph (d) concerns continuing public participation. This paragraph is not, as such, a requirement for an advisory committee. The recipient, as part of its program, may decide upon a mechanism to assure continuing public participation other than an advisory committee. The adequacy of any such mechanism would, of course, be reviewed by UMTA as part of its review of the recipient's program submission.

In setting up its advisory committee or other mechanism, the recipient should ensure its mechanism is widely representative of groups, interests and points of view on its service. Sharing of all relevant information is extremely important. An advisory committee or other public participation mechanism is of little use—and is inconsistent with the intent of this regulation—if its members are kept in the dark and their recommendations are ignored.

However, the views of the advisory committee or other continuing public participation mechanism are not required to be more than advice or recommendations. The rule does not require that the recipient adopt the suggestions of the participants in the process, or that an advisory committee be given veto or "sign-off" authority. Recipients may provide for stronger or more extensive

roles for the participants in the continuing public participation process than the rule requires, however.

Paragraph (e) requires the recipient to follow the same public participation process for significant changes to its program as in the adoption of its initial program submitted to UMTA. The intent of this requirement is to ensure that interested persons and groups have the same opportunity to participate when the recipient makes significant changes in its program as when the initial program is put together. A re-run of the public participation process in this situation would not postpone the time at which the recipient is responsible for meeting the full performance level of § 27.95, however.

The Department intends this requirement to apply only to major alterations in the scope or direction of the recipient's program and service. It would apply, for example, if the recipient, having adopted, in its original program, a transit authority-operated paratransit system, decided to change to an accessible bus system. Even if the recipient was not changing the mode of delivering transit services to handicapped persons, the requirement could apply in the case of a major cutback or realignment of its existing service.

Recipients would not have to renew the public participation process in the case of fine tuning of or routine adjustments to service. (The recipient would have to consult through the continuing public participation mechanism on such changes, however.) If the recipient is in doubt about whether or not it should renew the public participation process of paragraph (a)–(c), the recipient should consult the UMTA Regional Office for guidance.

Section 27.85 Submission and review of program.

Paragraph (a) of this section directs all UMTA recipients who must create a program under § 27.81 to submit certain materials to the appropriate UMTA Regional Administrator for review and approval within 12 months of the effective date of this rule. Timely performance of this duty is a condition of compliance with the regulation.

Subparagraphs (a) (1) and (2) require the recipient to submit to UMTA copies of the comments on the recipient's program and the recipient's responses to these comments. The recipient could submit photocopies of the comment letters it received and the responses it sent back to commenters to whom the recipient replied by letter. The recipient could submit summaries of comments and responses. The recipient could send a copy of the transcript of the public hearing. The recipient could send summaries of the comments and its responses to them, including summaries of presentations at the public hearing. It is not intended that informal replies made by the recipient's officers and employees at a hearing would be sufficient to constitute replies to comments for purposes of the "accommodate or explain" requirement, however. Whatever way the information is provided, it should allow UMTA to learn the substance of the comments and the identity of the persons or groups making the comments.

The planning process should involve a thorough analysis of the alternatives for providing transportation services to handicapped persons. The supporting documentation for the program submission should clearly reflect this analysis of alternatives (see subparagraph (a)(3)). Given what appear to be potential significant cost and cost-effectiveness advantages for private-sector related alternatives like user-side subsidies and coordination of services, and consistent with UMTA policy statements on private sector participation and user-side subsidies, UMTA will pay particular attention to recipients' consideration of these alternatives.

In looking at the costs of alternatives, including the alternative recommended in the recipient's program, the recipient should document expected eligible costs, including recurring as well as one-time capital and operating costs. This consideration of costs should cover the phase-in period to the full performance level, as well as the projected cost of providing service at the full performance level.

Subparagraph (a)(3) also requires recipients to calculate their limit on required expenditures. These limits should be estimated for at least the phase-in period and the first year of service at the full performance level. Recipients requesting approval of programs providing service that does not fully meet the service criteria should also include information about the cost, and cost-effectiveness, of trade-offs that recipients propose to make in order to permit their costs to remain below the cost limits, as well as of alternative trade-offs that the recipients considered.

The Department emphasizes that the choice of the mode of service for handicapped persons is the recipient's. However, UMTA may question the planning process or its conclusions and, as part of its response to recipients' submissions, call for additional analytic work or a reconsideration of the recipient's recommendations.

Paragraph (b) sets a 120-day deadline for UMTA to complete review of recipients' programs. If UMTA fails to meet this deadline, it has the obligation to inform the recipient of an extension of the review period before the 120 days have passed. The written notice must state the reason for the extension. It will also include a reasonable estimate of the date on which UMTA will conclude review.

UMTA will carefully scrutinize the recipient's program to ensure that it provides for meeting the full performance level as soon as reasonably feasible, but within the 6-year maximum phase-in period in any event. (UMTA will have the final decision on the appropriate length of the phase-in period.) UMTA will also check the program to ensure that its milestones lead realistically toward the full performance level. UMTA will not approve a program that does not meet these tests.

When UMTA does complete review, paragraph (c) provides that it will send one of three responses to the recipient. First, UMTA can tell the recipient that its program is approved as submitted. In this case, the program may go into effect at once, and the program's schedule for the implementation of service begins to run on the date of UMTA's approval notice. Second, UMTA can specify certain changes that need to be made in the program before it can be approved. Such a response can require both substantive changes (e.g., a change in the time, place, or manner of providing service) and procedural changes (e.g., additional public participation or recipient response to comments if UMTA concludes that procedures had not been fully adequate). UMTA can also require the recipient to revise its analysis or conduct additional analytic work.

The phase-in period would begin at the time of the original UMTA decision not to approve the program as submitted. It would not be appropriate to permit the time necessary for the recipient to fix program deficiencies to delay the implementation of full service to disabled persons. Finally, if it appears to UMTA that the program is so seriously deficient that the recipient needs to completely rework it, or it has been submitted in bad faith, UMTA may disapprove the program. UMTA has the discretion to begin enforcement action under Subpart F at this point.

If the program is not approved as submitted, UMTA's notice will give the recipient a certain amount of time—between 30 and 90 days—to make necessary changes and resubmit it. Like failure to submit a program on time in the first place, failure to resubmit a modified program in the time required by UMTA subjects the recipient to being found in noncompliance with this rule. The time and notice provisions of paragraphs (c) and (d) apply to resubmissions just as they apply to initial submissions.

However, UMTA is not obligated to "bounce" deficient programs back to recipients indefinitely. UMTA may disapprove an original or a resubmitted program, conclude that the recipient is in noncompliance, and begin enforcement proceedings.

Section 27.87 Provision of service.

Recipients have the obligation to actually provide the service to disabled persons that their programs promise. Paragraph (a) of this section makes the general statement that each recipient shall, at all times, provide the service described in its program. The "at all times" language is intended to ensure the continuity of service. For example, a recipient could not, consistent with the requirements of this section, provide service meeting all the requirements of this regulation and its program for the first 2½ weeks of a given month and then provide no service for the remainder of the month. Nor could the recipient provide the service for only 6 months out of the year. The service, moreover, must be provided to all eligible persons. It would not be consistent with this requirement for the recipient to provide service to some eligible persons but not to others.

Paragraph (b) sets out in greater detail some of the specific obligations that compliance with the general service provision requirement of paragraph (a) entails. The first of these is ensuring that

vehicles and equipment are capable of being used by the users to which the service is directed, and are maintained in proper operating condition.

The recipient must ensure that all vehicles the recipient operates or relies upon to meet its obligations under this Subpart are consistently maintained so that the vehicles can get to where they need to go in order to provide service. The recipient must also ensure that lifts and other specialized equipment needed to make vehicles usuable by handicapped persons work consistently so that handicapped persons can actually use the vehicles.

This paragraph also requires that the vehicles and equipment used by the recipient be capable of accommodating all users for which the service is designed. For example, a recipient which chose to comply with the rule by making its bus fleet accessible would have to ensure that the lifts, securement devices, etc. on its buses could accommodate all types of wheelchairs in common use. A lift which accommodates manual wheelchairs, but fails to accommodate common models of electric wheelchairs (including, for example, the increasingly popular three-wheel designs) does not make the buses accessible. Providing only such limited-use lifts is inconsistent with this section. (Of course, if a special services component of a mixed system transported persons whose wheelchairs could not use the lifts to all destinations in the service area, and otherwise met the service criteria, the limitation on the use of the lifts would be permissible.)

UMTA will not mandate a particular spare ratio; the recipient's obligation, however, is to ensure that it has sufficient numbers of vehicles in operating condition in reserve, so that if "front line" vehicles must be taken off the road for maintenance or repair, there will be no interruption or decrease in service to handicapped individuals.

The attitudes and skills of providers' personnel are one of the most significant factors in determining whether service for handicapped persons will be good or inadequate. The recipient must ensure that all personnel who may deal with handicapped individuals (whether as drivers or as administrative personnel) know, as necessary, how to operate lifts and other equipment properly, know how to recognize and deal with the different kinds of disabling conditions that the users may have, and deal with handicapped individuals respectfully and courteously. It is the responsibility of the recipient to make sure that this training does take place, and that handicapped users of the service are not treated poorly as the result of inadequate training.

In order to use a transportation system, any individual needs adequate information concerning that service. This is particularly true of handicapped individuals. This provision requires recipients operating scheduled accessible bus systems to provide information on schedules and in other sources of information concerning which bus runs are accessible. It is clear that, unless a potential user knows which bus on which route will be accessible, the user will be unable to take advantage of the service. A recipient need do nothing elaborate to comply with this requirement. For example, an asterisk or other symbol next to accessible bus runs on printed schedules would be adequate in most cases. If the recipient has a telephone information service for the public concerning routes and schedules, that service should provide the same information, and do so in a way useful to hearing-impaired persons (e.g., via a telecommunications device for deaf persons).

In addition to making sure that information and communications links are established, the recipient must also make sure that the communications links have sufficient capacity to accommodate the demand for their use. A paratransit system requiring phone-in reservations that has only one telephone, which is chronically busy, probably cannot provide the kind of service that the recipient's program calls for.

Paragraph (c) of this section is intended to make explicit that the regulation does not permit recipients to engage in disparate treatment, to the disadvantage of handicapped persons, with respect to transportation on the recipient's regular mass transit system. Even though the recipient may also provide special services for handicapped individuals, if a handicapped person is capable of using the recipient's regular service for the general public, then the transit operator cannot deny the service to the handicapped person on the ground of handicap. This means, for example, that a recipient must permit a person using means of assistance such as dog guides or crutches to use its vehicles and services for the general public, if the person can do so. This requirement and the nondiscrimination requirement of Subpart A would also bar actions by recipients that impose unreasonably different or separate treatment for handicapped persons (e.g., an unjustified requirement that a handicapped person, who is able to travel independently, travel with an attendant).

Because this regulation permits a phase-in period between the approval by UMTA of the recipient's program and the achievement by the recipient of the full performance level, paragraph (d) is intended to ensure that there will not be a gap in the provision of any service to handicapped persons by the recipient. In reviewing and approving programs, UMTA will, of course, seek to ensure that the recipient's service to meet the requirements of this Subpart is phased in at a reasonable pace so as to provide for a steady increase in the amount and quality of service provided up to the full performance level. If the recipient is phasing out its former type of service, and phasing in a new type of service, the exact point at which the new service has been phased in, such that the old service can be phased out, will be left to the recipient's judgment, subject to UMTA oversight.

Section 27.89 Monitoring.

Under section 9 of the UMT Act (49 U.S.C. 1607a (g)(2)), UMTA is required, every three years, to review and evaluate the entire spectrum of each recipient's federally-assisted mass transit activities. These triennial reviews will be held on a schedule to be determined by the UMTA Administrator; in all likelihood, they will be held in a staggered basis, so that approximately a third of all recipients are reviewed each year.

Paragraph (a) of this section declares that the review and evaluation of recipients' activities under this regulation will be conducted at the same time as the section 9 review and evaluation. The review and evaluation of transportation services for handicapped persons will be performed by, or at the direction of, UMTA personnel. UMTA may issue further guidance to recipients concerning the recipient's responsibilities in this process. This guidance may include, either on a general or a recipient-specific basis, requests for information necessary to assist the UMTA personnel in the review.

Some recipients will receive their first review and evaluation of performance under this regulation in the second year that their program has been in effect. Others will not receive their review and evaluation until sometime during the third or fourth year after their program has been reviewed and approved. Each recipient will, however, receive subsequent reviews and evaluations every three years after their first review occurs.

Paragraph (b) of this section concerns what is likely to be a very small group of recipients: recipients who are required to submit a program under § 27.81 of this regulation but who, for some reason, do not receive section 9 funds or otherwise are not required to go through a section 9 review and evaluation every three years. Some small recipients, for example, could fall into this category. For recipients in this category, UMTA will conduct a triennial review and evaluation of performance under this regulation just as if such a review were in conjunction with the section 9 review process.

Paragraph (c) of this section concerns what might be called a "slippage report." In its program, each recipient is required to establish a schedule for phasing in its service for handicapped persons until it reaches the full performance level. If recipients fall behind this schedule, paragraph (c) requires them to submit a report to UMTA no later than the program approval anniversary date of any year in which such slippage occurs. The report must detail the kind and degree of slippage that occurred, explain the reason for the problem, and set forth the corrective action that the recipient has taken or is taking to correct the problem and bring its entire program back on schedule. This same reporting requirement applies in any year, after achievement of the full performance level, in which the recipient's service, for any reason, falls below the full performance level.

This reporting requirement is a condition of compliance with the regulation. Failure to make the required report to UMTA is, in itself, a ground for a recipient being found in noncompliance with its obligations under the rule and being subject to sanctions under Subpart F.

Section 27.91 Requirements for small recipients.

This section sets forth a separate set of requirements that apply to section 18 recipients and other recipients (regardless of what UMTA funds they receive) which provide service to the general public only in non-urbanized areas (i.e., areas of 50,000 population or less). As with the requirements for recipients in urbanized areas, these requirements apply only to recipients that provide service to the general public. This section does not apply to section 16(b)(2) recipients or other recipients providing service only to elderly and/or handicapped persons. Recipients covered by this section are not required to follow the requirements of the rest of this Subpart, except for § 27.87, "Provision of Service."

For purposes of this section, the term "recipient" should be understood to refer to the local government agencies and other organizations actually providing transportation service in nonurbanized areas. We are aware that, in the section 18 program, a state agency is the initial recipient of UMTA funds, which the state then passes through to subrecipient service providers. However, the requirements of this section are not intended to apply to the state agencies involved.

Paragraph (b) requires all recipients covered by this section to certify, within a year of the effective date of this Subpart, that they are in compliance with this rule. If a certification of the kind required by this subsection has already been provided by the recipient under the July 1981 interim final rule, and is still in effect, a new certification need not be provided. This should be the case for present section 18 recipients. Otherwise, the certification must be provided within 12 months of the effective date of the Subpart.

The effect of this requirement is that recipients have service in place within the 12-month period following the effective date of this Subpart. Given the relatively small scale of operations by recipients in this category, the 12-month period should be sufficient. This constitutes the "reasonable time" mentioned in the regulation. A similar amount of time would be permitted future new recipients.

The substance of the transportation service that recipients are required to provide in order to be able to make this certification is similar to that required for section 18 recipients under the July 1981 interim final rule. Special efforts must be made to provide transportation that those handicapped persons unable to use the recipient's service for the general public can use. It should be noted that these efforts do not have to be made by the recipient itself; the certification goes to the presence of the "special efforts" service in the service area, not to whom is providing it.

The service provided by recipients must be "reasonable in comparison to the service provided to the general public." This statement embodies a minimum service criterion for the recipient's service to handicapped persons. It requires that the characteristics of service made available to handicapped persons be reasonably comparable to the characteristics of service for the general public. UMTA's monitoring of recipients' service will focus, on a case-by-case basis, on recipients' compliance with this criterion.

The second minimum service criterion requires that the service must meet a "significant fraction of the actual transportation needs" of handicapped persons. While the criterion stops short of requiring that all transportation needs of handicapped persons or all demand for service must be met, it does require that substantially more than a token effort be made to meet that demand. Rural and small urban systems are seldom designed to meet all transportation needs of the people of the service area. In monitoring recipients' service, however, UMTA will review whether the service proportionately meets the needs of handicapped as well as non-handicapped members of the community.

Paragraph (c) follows the statutory language of section 317(c) by directing recipients to ensure that handicapped persons and groups representing them have adequate notice of and the opportunity to comment on the present and proposed activities of recipients for achieving compliance with the requirements of this regulation. This notice and comment process may take place at any time within the first nine months after the effective date of this Subpart, but must precede the submission of any of the required certifications or reports.

This requirement applies to all recipients covered by this section, including present section 18 recipients who already have made the appropriate certificate of compliance. In the case of a present section 18 recipient or other provider of existing service, the purpose of the notice and comment period would be to identify problems in and suggest improvements to the existing service.

The same public participation requirement also applies whenever the recipient proposes significant changes in its service. The participation must occur before the change is finally decided upon and implemented.

Paragraph (d) requires each section 18 recipient to provide a one-time status report on its service. This requirement applies to all recipients covered by this section, including present section 18 recipients who have already made the certification of compliance. The report is intended to be a short summary of information concerning the four listed items.

In order to permit UMTA to continue monitoring the recipient's activities, each recipient is required, under paragraph (e), to provide a similar update report at three-year intervals. UMTA will establish a schedule for the transmission of these reports: some recipients will provide their first such report after the second year this Subpart has been in effect; others will not have to do so until after the third or fourth year. Reports under this section normally go to the designated state transportation agency (paragraph (f)). UMTA will review their reports in conjunction with its normal oversight of the section 18 program.

Section 27.93 Multi-recipient areas.

Paragraph (a) provides that this section applies to recipients in any multi-recipient area. A multi-recipient area is an urbanized area that includes two or more recipients required to prepare a program under § 27.81. The purpose of the section is to provide recipients in such an area the opportunity to combine their resources to provide service for handicapped persons on a regional basis.

This section is not mandatory. Recipients are not required to join a compact and provide service in conjunction with other recipients in their area, and recipients are free to comply with regulatory requirements on an individual basis.

In most cases, all recipients in the urbanized area required to prepare a program would have to be members of the compact in order for the compact to be workable. There could be cases in which a compact with less-than-unanimous membership could be viable, however; recipients should work with their UMTA regional office to ensure that any compact which is formed would be capable of providing service meeting the requirements of this rule. Recipients outside the urbanized area, or recipients who do not have to prepare a program, may also be members of a compact.

The compact must establish a cooperative mechanism among all its signatories to ensure the provision of combined and/or coordinated service meeting all regulatory requirements. Such a mechanism could take many forms, and this section does not attempt to prescribe the institutional form the arrangement would take.

In any multi-recipient or multi-jurisdictional agreement, a key question concerns where the money is coming from. The compact must answer this question. It must provide for how the costs of service for handicapped persons in the area would be apportioned among the members of the compact, ensure the provision of adequate funding, and include reasonable decision and dispute-resolution mechanisms concerning funding and service matters. The compact must be a formal, binding, written document, signed by each participating recipient. An informal understanding among recipients in an area is not sufficient for purposes of this section.

The recipients in an urbanized area have six months following the effective date of this Subpart to form a compact and submit their agreement to UMTA. If the recipients fail to reach agreement and do not submit a compact within the six-month period, then each recipient must comply with regulatory requirements (including the 12-month deadline for program submittal) on its own. This means that recipients should not, while negotiating about forming a compact, neglect the early stages of planning service of their own.

If a compact meeting the standards of this section is submitted to UMTA in a timely fashion, then the members of the compact are treated by UMTA as if they were a single recipient for all purposes under this Subpart, including planning, public participation, service provision, calculation of the limit on required expenditures, monitoring, and compliance and enforcement. It is important for recipients to understand that one of the consequences of joining a compact is that the members of the compact may be treated by

UMTA as collectively responsible for the failure of the compact to provide the service required by the regulation and called for by the compact's approved program.

After UMTA acknowledges the compact within 30 days of its receipt, the members of the compact would submit to UMTA a single combined program for approval under § 27.85. The program submitted on behalf of the compact's members would have to reach UMTA 12 months after the date the signed compact was acknowledged by UMTA, rather than 12 months after the effective date of this regulation. This provision is intended to permit adequate time for planning on an areawide basis.

If, subsequent to the six-month period, recipients that did not originally form a compact decided to do so, UMTA has the discretion to acknowledge it. However, in such a case, the compact members would have to submit, for UMTA's review and approval, a new, joint program for providing service to handicapped persons. This program would need to provide adequate information on how the transition from individual compliance to joint compliance with the rule would work. The individual programs that had been previously approved, and the service provided according to them, would remain in effect until the new combined program was approved.

By the same token, if an existing compact dissolves, the members would then have to submit individual programs to UMTA for approval. The same would hold true for a member that pulled out of a compact. If a recipient were to drop out of a compact, it would be required to continue to provide its services per the compact agreement until its own, new, independent program were approved and in operation.

Section 27.95 Full performance level.

(a) Timing. Under section 27.85, recipients have a year from the effective date of the new Subpart E to submit their program to UMTA. UMTA has 120 days to review it. Assuming UMTA acts on the program within that time (approval, disapproval, or remand to the recipient to fix deficiencies), the phase-in period would begin to run no later than 16 months from the effective date of the rule.

During this period, recipients are obligated to phase in their service. This is not intended to be a period of delay and inaction; the recipient is obligated to implement service according to the milestones set forth in its program on time (see discussion of § 27.81).

The phase-in period may run for a maximum of six years. Many recipients (e.g., those who are starting a new system or switching to a different mode of providing service) might need all or nearly all of the six-year period. On the other hand, some recipients have systems that may come close to meeting the full performance level at the present time. It would be contrary to the intent of the rule, for example, to permit a recipient that had 90 percent of the buses it needed to meet the service criteria for an accessible bus system to take six years to acquire the other ten percent.

The rule provides that the recipient's plan and milestones must provide for attaining the full performance level as soon as reasonably feasible. UMTA, in reviewing plans, will approve phase-in periods for each transit authority on a case-by-case basis, reflecting this policy as well as the realistic needs of each recipient for time to phase-in its service, up to the six-year maximum.

This paragraph notes that a recipient can comply by meeting the requirements of either paragraph (b), or (c), or (d). This language is intended to emphasize that the recipient may decide to operate either a special service system, an accessible bus system (of either type), or a mixed system. A recipient, for example, is not required to have both an accessible bus system and a special service system. The decision on which service option to implement is intended to be made by the local recipient.

The remainder of this section lists the service criteria applicable to special service, accessible bus, and mixed systems. The Department has established six service criteria that apply to all the modes of service to handicapped persons. These concern eligibility, hours and days of service, service area, fares, restrictions and priorities based on trip purpose, and response time. Paragraphs (b), (c), and (d) explain how these six basic criteria apply, specifically, to each mode of service. Though the criteria are essentially the same, the detail of their application to the various modes of service vary somewhat in order to make sense in view of the differing characteristics of the different types of transportation.

(b) Service criteria for special service systems. The following criteria apply no matter what type of special service the recipient provides (e.g., transit authority-operated paratransit, user-side subsidy).

(1) Eligibility. The eligibility criterion provides that the recipient must treat as eligible any individual who, at the time he or she would receive service is, by reason of a disability, physically unable to use the recipient's bus service for the general public. A recipient may, of course, voluntarily provide service to other persons as well, such as non-disabled elderly persons or mentally handicapped individuals. However, the cost of providing this service to additional users is not an eligible expense under § 27.99.

This provision is not intended to permit recipients to turn away from their special service systems users who would be unable to use an accessible bus system for reasons unrelated to the system's accessibility. For example, physical or terrain barriers, bad weather, or distance may prevent some handicapped persons from getting to a bus stop. These persons are still required to be treated as eligible for special service, because they could board and use fully accessible buses if they were able to get to a bus stop.

The Department recognizes that persons with cognitive disabilities also have a need for transportation. Many such persons, would be able to use the regular system with appropriate training, and the Department encourages the development and implementation of such training programs to increase the transportation opportunities for mentally handicapped persons. It is also necessary that training be provided for the drivers so that they will better understand, be patient with, and appropriately respond to questions from mentally retarded persons.

The rule does not specify the means a recipient may use to determine physical inability to use the regular bus system, although reasonable "functional criteria" may be used. The means the recipient would use to determine physical inability to use the regular bus system would be incorporated in the program submitted for UMTA approval.

The Department does not intend to require recipients to use age, by itself, as a basis for determining that an individual is physically unable to use the regular bus system. No one need be presumed to be physically unable to use the regular bus system just because he or she has reached a certain birthday. Many elerly persons may suffer mobility impairments or other handicaps that physically prevent them from using the regular bus system, but it is these disabilities, not age itself, that determines eligibility.

The key is whether or not a particular elderly person can physically use the service for the general public. Some 80 year old individuals may be able to physically use the service for the general public, and some 65 year old individuals may be unable to do so. If, because of age, an individual is physically unable to use the regular service—even if that individual does not have a specific medical condition—that individual is eligible for the special service.

A similar analysis applies to young children. If, because the recipient has a reasonable, nondiscriminatory policy against permitting very young children to ride buses unaccompanied, or because such children cannot read destination signs, such individuals cannot use the bus system, these facts do not make them eligible to use the special service. This is because their youth, rather than a handicap, caused their inability to use the regular bus system (which is not, in any event, a physical inability).

It would not be consistent with this rule, however, for a recipient to deny a non-disabled child the opportunity to accompany a disabled parent or other adult on the special service system. This could be very important, for example, in allowing the parent to take the child to a medical appointment. The converse is also true. A non-disabled parent or other adult would have to be given the opportunity to travel with a disabled child.

The rule does not prescribe any particular procedures that recipients must use to determine eligibility. Existing systems use such means as letters from a doctor, certifications by social service organizations, and eligibility determinations (e.g., concerning meeting functional criteria) by the transit provider itself. Whatever procedure is used, the recipient needs to ensure that the procedure is prompt, avoids unnecessary procedural obstacles, does not impose more than nominal costs on potential users, and is consistent with the dignity of handicapped persons applying for eligibility. The eligibility procedure should be spelled out in the recipient's program.

Section 27.97 provides that recipients must meet this eligibility criterion in all cases, regardless of whether the recipient can meet

all service criteria without exceeding the limit on required expenditures. In other words, the eligibility requirement of this rule is not subject to "tradeoff" in order to reduce recipient expenditures below the cost limit.

The Department intends that all users eligible under the Department's standard be permitted to use a recipient's special service, regardless of the user's place of residence. A visiting wheelchair user from City A is just as eligible, under the terms of this section and § 27.87, as a wheelchair user from City B to use the latter city's special service system. Recipients may need to waive or abbreviate the certification procedures they use for their regular local riders. The same point applies to persons with temporary, as opposed to permanent, disabilities.

(2) Response time. By response time, we mean the total period from the time the disabled person calls the special service provider to request service to the time the service is actually provided to the handicapped person (i.e., pickup). Recipients are obligated to provide, as well as schedule, service, within the required period. (see also § 27.87(b)(5), concerning timely provision of service).

We do not intend, however, to view recipients as being in noncompliance solely because of an occasional late pickup. Repeated, chronic failure to provide service within 24 hours of a request, however, is inconsistent with this criterion and with the recipient's obligations under this criterion.

The Department intends that this criterion be administered with reasonable administrative flexibility, for the benefit of both users and providers. For example, it may not be reasonable for a recipient to insist that a user call the recipient at 7:30 a.m. on Monday in order to get service at 7:30 a.m. Tuesday, even though this insistence would be literally consistent with the 24-hour response time criterion. A call at any point on Monday morning should usually be sufficient to permit the recipient to do the advance planning necessary for its morning trips on Tuesday.

Likewise, a recipient with no weekend bus service might not provide special service on weekends. Literally interpreted, the 24-hour criterion would force the recipient to open its call-in reservation office on Sunday to take reservations for Monday trips. The Department intends, in such a situation, that the recipient be able to keep its office closed on the weekend, taking reservations for Monday on the previous Friday.

The Department, then, interprets the 24-hour criterion to mean "a reasonable time on the previous business day" in many cases. In addition, this criterion is not intended to prohibit advance sign-up requirements for special-purpose trips (e.g., for a group field trip). Nor is it intended to prohibit a recipient from allowing a user to make a reservation for more than a day in advance (e.g., from calling on Monday to reserve a trip for Thursday).

(3) Restrictions or priorities based on trip purpose. This criterion is intended to prohibit recipients from determining that they will not provide service for certain sorts of trips, which they have determined to be of relatively low importance, or from providing trips for such purposes only after requests for the trips they deem to be of higher importance have been fulfilled. This criterion, however, is not intended to preclude recipients from establishing subscription services. Trips on the subscription service may be limited to certain purposes (e.g., recurring work or medical trips). However, a recipient which operates a subscription service may not deny or delay transportation to other individuals, for other purposes, on the ground that all capacity is exhausted by subscription service and still meet this criterion.

If a recipient cannot provide service that fully meets the criteria without exceeding its limit on required expenditures, it may make tradeoffs concerning trip purpose restrictions or priorities. For example, if after serving subscription work trips and medical trips, the recipient does not have enough other capacity to serve persons wishing trips for other purposes during peak hours, the recipient could "time-shift" the trips for other purposes to non-peak hours. The "time-shifted" trips would still be served during the requested day, at a non-peak time convenient for the user.

(4) Fares. The fare charged for a trip to a user of the special service is required to be comparable to a trip of similar length, at a similar time of day, on the recipient's bus system. We recognize that, in most cases, a trip taken on special service will not be identical, in route or in length, to similar trip taken on the regular bus system. We recognize also that the cost and convenience characteristics of special service systems differ from those of bus systems.

The key to determining an appropriate fare for the special service trip would be to calculate the cost of a similar trip on the regular bus system that the individual would take to get from his origin to his destination, if he or she were not handicapped, including the cost of transfers, if any (or zone change charges, express bus fares, etc.). Should there not be any reasonably equivalent trip that a user of the bus system could take, then the bus fare used for purposes of comparison would be derived by comparing the special service trip taken by the handicapped person to a bus trip of similar length elsewhere in the recipient's bus system.

Determining "comparability" between the bus fare for a similar trip and the special service fare is not an exact science. Decisions must be made on a case-by-case basis, taking into account such factors as the relative costs of providing the service, the time and convenience factors affecting users, and the Department's policy against pricing service out of the reach of users. It is likely, for example, that a $1.50 fare for special service would not be out of line, compared to a basic 80 cent fare for a similar bus trip, in most cases. At the other end of the scale, charging a special services user $20 for the same trip would be far removed from "comparability," because it would be grossly disproportionate to the bus fare and would deter disabled persons from using the service.

In doubtful cases falling in the middle of the scale, recipients should consult with UMTA. Fare levels for special service are, of course, one of the items that recipients should cover in their program submissions. While determinations are case-by-case, it is likely that UMTA would question fare levels that rose above two or three times the bus fare for a similar trip at a similar time of day.

This criterion deals with the fare charged the individual disabled user of the special service. If the bus fare between Point A and Point B is 80 cents, then the recipient can charge a special service user no more than a comparable fare for a similar bus trip. However, this requirement is not intended to preclude the common arrangements between recipients and social service agencies in which the social service agency subsidizes a considerable portion of the cost of a trip. The amount of such a subsidy is a matter between the recipient and the agency.

(5) Hours and days of service. If a recipient operates its bus service from 6:00 a.m. to midnight, seven days a week, then special service (e.g., paratransit or user-side subsidy) must be available throughout at least the hours 6:00 a.m. to midnight, seven days a week. By saying "throughout" this period, the Department intends that service be available at any time during these hours. Providing service only during peak hours, or only from 6–7 a.m. and 10–11 p.m. would not be consistent with this requirement.

This criterion is subject to "tradeoff" in a situation in which a recipient cannot meet all applicable service criteria without exceeding its limit on required expenditures. For example, a tradeoff (affecting the service area as well as the hours of service standard) might involve providing service to an area smaller than the urbanized area late at night and on Sundays, even though the regular bus system was operating at those times.

(6) Service area. A recipient must provide special service "throughout" the "circumferential" service area in which it provides regular bus service. This means that the recipient must provide this service not just along transportation corridors served by buses, but to all points of origin and destination within this area. (This is not intended to literally require door-to-door service, however. As long as the service is from the building or other location of origin to the building or other destination location, the criterion would be satisfied. Actually assisting a handicapped person from the door to the curb, for example, is not required.) A "many-to-few" system, with limited origins or destinations within the urbanized area, would not be consistent with the requirement to provide service "throughout" the area.

The recipient could determine the extent of the "cricumferential" service area in a number of ways. As the term implies, the recipient could simply draw on a map a circle encompassing the area in which all its regular bus routes operate. Alternatively, a recipient could take the outer termination points of its routes and "connect the dots," resulting in boundaries for the service area that more precisely follow the contours of the actual bus service area. Where the normal service is within the urbanized area, the Department would also have no objection, in many cases, to a recipient using the urbanized area as a service area for this purpose. Particularly for a recipient that already provided bus service

to most parts of the urbanized area, this approach could be administratively simpler.

In determining the extent of its service area, the recipient need not encompass extended commuter or express bus routes. For example, many recipients may have a city/suburban service area that is served regularly during peak and non-peak hours. In addition, the recipient may have peak-hour express commuter service to more distant exurban points. These commuter bus "spokes" do not extend the circumferential "hub" area that the recipient must serve with origin-to-destination special service.

For service (e.g., commuter bus) extending outside the basic service area, the recipient is required to provide service to handicapped persons only to and from the same points (e.g., bus stops) served by its buses for the general public. This service could be by special service following the bus route or accessible commuter bus, and would have to run only at the times when the commuter buses operated. Service to other origins and destinations outside the basic service area is not required.

The circumferential service area need not necessarily be the same at all times of the day or week. For example, some recipients might not offer any late-night or weekend bus service on many routes outside the central city. The service area for special service could shrink proportionately at these times.

The service area criterion is subject to "tradeoff" in the event that the recipient could not meet all applicable service criteria without exceeding its limit on required expenditures. As part of a tradeoff, a many-to-few system, a fixed route-deviation system, or another variation on special service that did not serve all origins or destinations could be employed.

(c) *Service criteria for accessible bus systems.* The final rule does not contain any specific requirement for the number of accessible buses a recipient must own and operate. Rather, subparagraph (1) of this paragraph says that the recipient must operate, on the street, enough buses to ensure that it meets the service criteria of subparagraphs (2) and/or (3).

To operate this number of buses on the street, recipients will need to consider the number of accessible buses they need in their reserve fleets. It is clear that in order to maintain the appropriate number of accessible buses on the street, a recipient will need to have some accessible buses in reserve in order to cover maintenance down time and other contingencies. A recipient would not comply with this subparagraph (or with § 27.87) if it owned sufficient accessible buses to meet the service criteria when all wer operating, but, for lack of reserve accessible buses, was unable to keep enough buses actually on the street to meet the criteria at all times.

Subparagraph (2) sets forth the other service criteria for scheduled accessible bus systems. A scheduled accessible bus system is simply one in which accessible buses are scheduled to be used for (and are used for) certain runs on certain routes. This use must be regular and consistent.

Subparagraph (2)(i) requires the scheduled accessible bus service to be available throughout the same days and hours as the recipient's bus service for the general public. For example, if a recipient's regular bus service runs from 6 a.m. to 12 midnight, then the scheduled accessible bus service must be available throughout this 18-hour period. Running accessible buses only during peak hours, or having only the first and last bus runs on a route accessible, would not be consistent with this criterion.

The scheduled accessible bus service running throughout this 18-hour period would have to be provided at reasonable intervals that make readily practicable the use of the service by handicapped persons. The regulation does not establish a specific requirement for what these intervals must be. The recipient's judgment about appropriate intervals, which should be informed by the rule's public participation and planning process and which is subject to UMTA review as part of the recipient's program submission, may vary according to such factors as demand for accessible service on a particular route and the time of day.

Every interval on evey route in the system need not be the same. But intervals so wide or irregular as to provide merely token or perfunctory service, or which are significantly inconsistent with demand for accessible service, would not comply with this criterion.

Subparagraph (2)(ii) requires accessible bus service to be provided on all routes throughout the recipient's service area on which a need for service has been established through the rule's planning and public participation process. By saying "throughout the service area," this provision is not limited to service within the basic circumferential service area. Any route on which the recipient provides regular bus service (including extended commuter routes and express bus service) is potentially required to have accessible service.

Whether the potential requirement for accessible service on a given route becomes actual depends on whether the planning and public participation process shows that a need exists for accessible service on that route. The Department intends that a need for accessible service on a route be regarded as having been established when it is shown that one or more handicapped persons are likely to make reasonably regular use of bus service along some part of the route.

For example, bus routes serving centers for independent living, important transportation terminals, major medical facilities, universities, major employment centers, and other origins and destinations that are likely to generate trips by handicapped persons would probably need to have accessible service. However, a need for accessible service could also arise on a suburban route because one or more handicapped persons wished to use that route for trips to work, shopping, or other purposes on a reasonably regular basis.

The Department believes that it would be desirable for recipients choosing a scheduled accessible bus system to make some provision for providing services to disabled persons whose origin or destination is not on an accessible route. The form of such service is up to the recipient, however.

As with service intervals, the routes served by accessible bus service may change over time, as new service needs arise and former service needs disappear. Changes in the route structure of accessible service are also appropriate subjects for consultation through the continuing public participation process.

Subparagraph (2)(iii) provides that the fare for a handicapped person using the accessible bus system cannot be higher than the bus fare paid by other passengers. Everyone who gets on the bus to go from Point A to Point B pays the same fare, except that the elderly and handicapped half-fare program of 49 CFR § 609.23 continues to apply in the accessible bus context.

Subparagraph (3) contains service criteria for on-call bus service. An on-call accessible bus system is one in which accessible buses are not regularly scheduled on any particular routes or runs. Instead, handicapped persons wanting to use accessible buses call the transit provider and arrange for an accessible bus to come by a particular bus stop on a given route at a certain time.

Some of the criteria for on-call accessible bus service are virtually identical to the special service criteria. The eligibility (subparagraph (3)(i)), response time (subparagraph (3)(ii)), and the restrictions and priorities based on trip purpose criterion (subparagraph (3)(iii) are in this category. The fares criterion (subparagraph (3)(iv)) is identical to the fares criterion for scheduled accessible bus service.

Subparagraph (3)(v) concerns days and hours of service. Like its counterpart in the scheduled accessible bus service context, it requires service to be provided throughout the same days and hours as the recipient's bus service for the general public. This means that a handicapped person can request that any bus run the recipient makes, during any time the run is made for the general public, be made with an accessible bus. The recipient is obligated to fulfill the request. There is no provision concerning the intervals at which service is to be provided. Service is provided in response to all requests made for it.

The service area criterion (subparagraph (3)(vii)) requires accessible service to be provided on all the recipient's routes, on request. This means that when the recipient receives a request from a handicapped person for accessible service, the recipient must fulfill this request regardless of the route on which the service is requested (including extended commuter routes and express bus runs).

There is, however, no reference to establishing the need for bus service on particular routes through the planning process. This is because, in an on-call accessible bus system, need for service is established by each individual request for it, rather than on a generic basis for scheduled service on a route.

This subparagraph also specifies that "all buses needed to complete the handicapped person's trip" have to be provided. For example, suppose a handicapped person has to take a bus on route A to a given stop, and then transfer to a route B bus, in order to reach his or her destination. The recipient

must ensure that the B bus, as well as the A bus, is provided at the appropriate time.

A recipient may comply with the rule by setting up an accessible bus system incorporating elements of both scheduled and on-call accessible service. For example, the recipient could operate scheduled accessible bus service during peak hours while using on-call service during off-peak hours. A recipient could operate scheduled service on certain heavily-used corridors while using on-call service elsehwhere. The scheduled and on-call components of the service would each have to meet the service criteria for the respective types of service, and there could not be "gaps" in the overall service that left some routes, times, etc. unserved for handicapped persons.

For purposes of this rule, an accessible bus is one of that a handicapped person, including a wheelchair user, can enter and use. Currently, an accessible bus usually means a bus equipped with a lift. The Department does not intend to mandate the use of a particular piece of technology, however. If a device or bus design other than a lift-equipped standard transit bus can produce the same or better results for handicapped persons than present technology, then the Department will be willing to consider regarding it as meeting the accessible bus requirement.

(d) Service criteria for mixed systems. A mixed system is simply one in which some parts of the service area, or some days or times of day, are served by an accessible bus system, and others are served by a special service system. The key thing to remember about a mixed system is that each component must meet all criteria pertaining to that component. The overall system cannot have "gaps" that leave some areas, times, etc., unserved by service for handicapped persons.

In a mixed system, the special service and accessible bus components are not required to duplicate each other's efforts. Consequently, the special service system would not have to provide parallel service along accessible bus corridors. For example, the special service system would not have to honor a request from a handicapped person to be picked up at his home, situated reasonably close to a bus stop on an accessible corridor, and be transported to a destination served by a bus route using that stop.

The recipient might also reduce the scope of the special service it had to provide by linking the ends of or other strategic points on accessible routes with an accessible shuttle service, so that someone wanting to travel from a point along Route A to a destination at the end of Route B could complete his trip using only accessible buses and the shuttle. Except where it would duplicate accessible bus service, however, the recipient's special service would have to meet all service criteria applicable to any special service system (e.g., the special service system would have to pick up the same handicapped person from his or her home if he or she were going to a location not on the nearby accessible route or one accessibly connected with it).

The recipient is responsible for coordinating the components of its mixed system so as to minimize inconvenience to handicapped users. This coordination should include consideration of transfers between components. The coordination of mixed system components is one of the features UMTA will evaluate as it reviews the program submissions of recipients planning mixed systems.

(e) Services of other providers and through other modes. Paragraph (e) states the principle, for all service modes, that a recipient may count the services of other providers toward meeting the full performance level. This is true even though the expenditures of these other providers are not eligible expenses under § 27.99.

For example, suppose that a social service agency operates a subscription service that transports wheelchair users who need kidney dialysis to medical facilities where the treatment takes place. As part of a coordinated transportation system for handicapped persons in the urbanized area, the recipient is able to refer persons in this category to the social service agency, which provides the dialysis trips instead of the recipient itself. The recipient can count this service as part of the service meeting its full performance level.

This paragraph also provides that service provided through other modes of transportation may be counted toward meeting the service criteria. For instance, suppose a transit authority operates an accessible rail system. The recipient chooses to meet the full performance level through making its bus system accessible. Like many bus/rail operators, however, the recipient uses its buses to feed passengers into and out of the rail system. The recipient could feed disabled passengers into the accessible rail system in the same manner as it did other passengers, and would not have to run bus service that duplicated the rail lines. The recipient could treat both its bus service from Point A to a rail station and the accessible rail service from the station to Point B as contributing to meeting the service criteria.

The key is coordination by the recipient of these services into a coherent whole. The mere facts that a social service organization may be providing some transportation somewhere in the urbanized area, or that there may be an accessible rail system in the same area, unless these services are in a system coordinated by the recipient, are irrelevant to the recipient's ability to meet the full performance level.

Section 27.97 Limit on required expenditures.

Paragraph (a) sets forth the method recipients will use to calculate the limit on their required expenditures. First, the recipient calculates its average operating expenditures. It adds the operating costs reported to UMTA for the previous two fiscal years under section 15 to its projected operating costs for the current fiscal year and divides by three.

The estimate of operating costs for the current fiscal year must be a reasonable one, consistent with the budget estimates the transit authority makes for other purposes. (Obviously, the projection must concern the costs that will be reported under section 15.) An unrealistically low estimate, one at odds with the transit authority's recent operating cost experience, or one that differs significantly from estimates prepared for other local budgetary purposes, is not acceptable for this purpose.

Paragraph (b) concerns the effect of the cost limit. If a recipient can meet all the service criteria, for an amount less than the cost limit, then the cost limit is ignored during the fiscal year in question. However, the recipient is not required to spend more than the cost limit amount, even if, as a result, it cannot meet all the service criteria for the mode of service it has chosen.

For example, suppose a transit authority determined that meeting all the service criteria for its paratransit system would cost $800,000. If its cost limit is $650,000, it can voluntarily spend the entire $800,000 to meet all service criteria. However, this regulation does not require it to do so.

After consulting through the public participation mechanism established under § 27.83 of the final rule, the recipient could make decisions about the respects in which it paratransit service would fall short of one or more of the service criteria. For example, the recipient in the above example might determine that it could save $150,000 by not running the paratransit service on Sunday, raising fares above the level charged for similar bus trips, and not providing service to one segment of the service area which has relatively low demand for trips by handicapped persons. (In making tradeoffs, the recipient would have to act reasonably. For example, a recipient would not act reasonably in a tradeoff situation by raising fares to $30.00 a trip or restricting service to a 2 square block area.) These changes, though they result in service that does not fully meet the criteria, are allowed under the rule since the recipient need not spend more than $650,000 to comply with the rule.

Section 27.99 Eligible expenses.

To be eligible to count in determining whether the recipient has exceeded the § 27.97 limitation on required expenditures, an expenditure must meet two basis criteria. First, it must be an expenditure by the recipient of its own funds (including the UMTA assistance it receives). The total expenditures the recipient makes, not just the net expenditures after farebox revenues are considered, are counted. Second, it must be an expenditure specifically to comply with the requirements of 49 CFR Part 27, Subpart E.

This means that expenditures by other agencies (e.g., state and local government agencies, private social service organizations) on transportation services for handicapped persons cannot be counted for this purpose. As described in the discussion of § 27.95(e), the transportation services for disabled individuals that these other agencies provide can be "counted" by the recipient as part of the transportation services meeting the service criteria, however.

The same principle applies to the costs of operating an accessible rail system. No recipient need operate an accessible rail system to comply with this rule. However, a rail recipient may use an accessible rail

system to help meet its service requirements. But the expenses of building and operating the accessible rail system are not attributable to meeting these regulatory requirements, and they are not, therefore, eligible expenses.

Subparagraph (b)(6) provides, however, that the incremental cost of construction of modification of facilities to enable handicapped persons to transfer between accessible modes of transportation is an eligible expense, if the improvement is approved as part of the recipient's program. For example, suppose that a recipient is voluntarily making a rail line or station accessible. The cost of making the rail line or station accessible is not an eligible expense, since this cost is not incurred to meet the requirements of this rule. However, the incremental cost of a new or relocated bus stop to serve the station or line, together with curb cuts, signs for the use of handicapped persons, or other accessibility-related improvements that help disabled persons transfer between the accessible rail and accessible bus systems would be eligible. It is important to emphasize that only the incremental costs of such improvements, attributable to features specifically related to service for disabled persons, are eligible. In reviewing recipients' programs, UMTA will scrutinize closely plans for "interface" improvements of this sort to ensure that only eligible costs are claimed for purposes of the limit on required expenditures.

Only expenditures specifically to comply with the requirements of this regulation are eligible. If a recipient chooses to provide service above and beyond what this regulation requires, only the expenditures actually needed to meet the Federal regulatory requirements are eligible.

For example, the rule does not require non-handicapped elderly persons to receive service from a special service system. If a recipient provides service to non-handicapped elderly persons, in addition to eligible handicapped persons, only the costs of the special service system attributable to carrying the latter may be counted.

Only those items necessary to meet the full performance level for the mode of service selected by the recipient will be eligible expenses. "Gold-plating" (the practice of attributing to service for handicapped persons the cost of items that generally improve the recipient's entire service to the public or loading down the service to handicapped persons with features or facilities not essential to meeting the service criteria) will not be permitted to drive up the reported eligible expenses service for handicapped persons to the detriment of providing service meeting the criteria.

This provision applies even if the things the recipient does above and beyond the regulation's requirements are required by another legal authority, such as the Architectural Barriers Act of 1968 or state or local law. For example, a recipient might, as the result of the Architectural Barriers Act, install an elevator in an existing subway station where it has otherwise modified the means of vertical access. Such an expenditure would not be the result of the requirements of this rule; the cost of installing the elevator would not be a financial burden imposed by the Department of Transportation in order to comply with section 504 and section 317(c). Consequently, the cost of the elevator could not be counted in determining whether the recipient had exceeded the § 27.97 limitation on required expenditures by recipients.

Section 27.99(b) mentions that the capital and operating costs for special service systems, and the incremental capital and operating costs of accessible bus systems, are eligible expenditures. The language of the section does not explicitly mention mixed systems. A mixed system is, by definition, a system made up of accessible bus and special service components. In determining whether the costs of a mixed system exceed the limitation on required recipient expenditures, the recipient would add the capital and operating costs for the special service component of its system and the incremental capital and operating costs of the accessible bus component of its system.

By "incremental" capital and operating costs of an accessible bus system, we mean those costs of meeting the service criteria for accessible bus systems that are in addition to the costs of operating an inaccessible bus system. For example, suppose a lift-equipped bus costs $120,000. Without a lift, and other equipment necessary to make the vehicle safe and accessible for handicapped persons (e.g., wheelchair tiedowns), the bus costs $108,000. The incremental cost of buying the accessible bus is $12,000. Only that amount, not the entire cost of the bus, is an eligible expense. The same principle applies to operating costs. If maintaining the lift on an accessible bus can be demonstrated to take 20 work hours in a certain period of time, the wages of the mechanics for those 20 hours can be counted, but not the wages of the mechanics for the total number of work hours required on the entire bus during that period.

Section 27.99(b)(3) specifies that administrative costs of coordinating services are eligible. In addition, reasonable administrative costs of a special service system or an accessible bus system may be considered as a part of the eligible operating costs of such systems. UMTA will consider, on a case-by-case basis, whether specific administrative costs are eligible, following the general rule that if a cost is generally an allowable cost for reimbursement with UMTA funds, that part of it directly attributable to providing service for handicapped persons can be counted for purposes of this section.

Section 27.99(b)(4) specifies that the incremental cost of training personnel to provide service to handicapped persons is an eligible item. Again, by "incremental cost" we mean the portion of the cost of training directly attributable to service for handicapped persons. For example, if four hours of a bus driver training course are devoted to operating the lift and otherwise accommodating handicapped persons on an accessible bus system, the cost of those four hours of training, but not the cost of the entire course, is eligible.

Section 27.99(d) requires recipients to annualize the cost of capital expenditures, such as the purchase of vehicles, over the expected useful life of the item. This provision would also apply to other major capital items (e.g., a new fixed facility specifically devoted to the garaging and maintenance of special service vehicles), but not to minor or routine purchases of supplies, parts, and other equipment. In doubtful cases, recipients should contact their UMTA regional office for guidance.

The Department is aware that there may be a number of methods, of varying degrees of accounting sophistication, for annualizing a capital expenditure. In the interest of simplicity, however, the Department intends that recipients simply divide the number of years in the expected useful life of the item into its cost, and then count the result toward the cost limit in each of the years involved.

For example, suppose that the incremental cost of a lift-equipped bus is $12,000, and that the expected useful life of a bus is 12 years. The annualized cost of the bus would be $1,000. Therefore, the recipient would count $1,000 in its calculation of eligible expenses for year 1, year 2, and so forth, through year 12.

Where there is not a generally accepted industry standard (e.g., 12 years for buses) for a given capital item, recipients should consult with their UMTA regional office for guidance on how many years should be regarded as the item's expected useful life.

Section 27.101 Technical exemptions.

This provision permits any recipient to request a technical exemption from any provision of this Subpart. Such a request can be made at any time, as an independent request. It is also possible for a recipient to submit a technical exemption request as part of, or in connection with, the recipient's program submission. Section 27.101(b) clearly sets forth the standards for granting exemptions under this rule. These standards are consistent with the standards DOT has applied to requests for exemptions in the past. First, there must be special local circumstances. That is, the reasons specified for the requested exemption must be, if not literally unique, quite specific to the local area requesting the exemption. The Department will not grant an exemption based on circumstances common to a broad class of recipients. An exemption from a regulatory requirement based on circumstances common to many recipients would constitute, in effect, a rulemaking of general applicability, which may be made only through normal rulemaking procedures.

Second, the circumstances used to support the exemption request must involve matters not contemplated, or taken into account, as part of the rulemaking process for this rule. The Department is aware that it probably has not thought of all possible issues or situations that can arise. This exemption procedure is intended to apply to matters not dealt with in this rulemaking. If, on the other hand, the Department has received and considered comments on how a certain issue or situation has been handled, and then made a decision, the exemption process is not a mechanism for reconsidering a regulatory decision the Department has made.

Third, the applicant for an exemption must demonstrate that the circumstances cited

make compliance with the rule unduly burdensome or unreasonable. The undue burdens or unreasonableness, consistent with the two standards discussed above, must be specific to the particular grantee, and not something affecting grantees, or a broad class of them, in common.

Fourth, the recipient must show that, if it is granted the exemption, it will take some alternate action that will substantially comply with the regulation. The grant of an exemption is not a license for noncompliance; it is agreement by the Department and the recipient that the recipient will take action adequate to provide transportation services to handicapped persons, even though it is, in some respects, excused from following the letter of the regulation. It should be emphasized, however, that the exemption provision is not intended to permit recipients to fashion "do-it-yourself" modifications of the requirements of the regulation.

The Department may grant a request for a technical exemption, in whole or in part, or deny it. The Department may also place any reasonable conditions on the grant of the exemption. The UMTA Administrator will sign grants or denials of exemption requests, and such requests should be addressed to the Administrator. In keeping with existing DOT practice, the Assistant Secretary for Policy and International Affairs must concur in grants or denials of exemption requests under this rule.

Section 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs

Section 27.103 provides a slightly different procedure for submitting documents under this Subpart if a state has elected to administer UMTA's sections 5, 9, and 9A programs for UMTA. This procedure applies to urbanized areas of under 200,000 population. If a state has made this election, the designated state agency is the actual recipient of the UMTA funds and the state agency, in turn, passes them through to the urbanized area. This is similar to the section 18 program.

If the election is made, the local recipient must send the program required under § 27.85, the slippage report under § 27.89(c), the certification and report under § 27.91(f), and any compact under § 27.93(c) to the designated state agency and not to UMTA. (The state would have to inform UMTA when a slippage report was received). The designated state agency acts for UMTA to review and, as necessary, approve these documents. In doing so, any deadlines which the regulation imposes on UMTA apply to the designated state agency. For example, the designated state agency would, under § 27.85(b), have to complete its review of the local recipient's program within 120 days of its submission. Similarly, the time extensions under § 27.85(c) would also apply to the designated state agency.

Section 27.103(b) requires the designated state agency to certify to UMTA that the recipients in its state are in compliance with this Subpart. This certification can cover more than one recipient, but it is due to UMTA no later than 30 days after the designated state agency approves the recipient's program.

It is important to note that the state's election to administer these programs is voluntary. Any recipient located in a state not so electing must send its material to UMTA. Also, the provisions in this section do not apply to small recipients covered by § 27.91.

Enforcement Procedures

Subpart F (§§ 27.121–27.129) of 49 CFR Part 27 concerns enforcement of the obligations of recipients under Subpart E, the mass transit program requirements, as well as all the other Subparts of this regulation. Briefly, Subpart F provides that when, as a result of a complaint investigation or compliance review, the Department learns that a recipient appears to be in noncompliance, the Department first attempts to resolve the problem informally.

This informal resolution step is the most important part of the enforcement process, from the Department's view. At this stage, the Department works with the recipient to solve the planning, management, or operational problems that led to the enforcement action. The aim of the process is not to impose sanctions on the recipient, but to correct the situation so that the recipient provides service to handicapped persons as the regulation requires. Only if informal resolution fails does the Department resort to formal enforcement proceedings.

If there is reasonable cause for the Department to believe that the recipient is in noncompliance, and that the noncompliance cannot be resolved informally, the Department notifies the recipient that it proposes to suspend, terminate, or refuse to provide Federal financial assistance to the recipient. The recipient has the opportunity to present its case at a hearing before an administrative law judge. The judge makes a recommended decision to the Secretary, who may accept, reject, or modify the recommended decision. The Secretary's decision is administratively final (it may be reviewed by a Federal court under the Administrative Procedure Act) and the sanctions the Secretary orders remain in effect until the recipient comes into compliance with the regulation.

Any person who wishes to submit a complaint alleging that a recipient is in noncompliance with this regulation should send the complaint to the following address: Director, Departmental Office of Civil Rights, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Noncompliance should be understood simply as the failure by a recipient to do what the regulations require of it, or action by a recipient contrary to regulatory prohibitions. The following are examples (not intended to be an exhaustive or exclusive list) of conduct under Subpart E that could be regarded as noncompliance, for recipients to which the various requirements apply:

- Failure to have a program consistent with the requirements of § 27.81;
- Failure to follow any of the public participation requirements of § 27.83;
- Failure to submit the program documents to UMTA within the time frames of § 27.85;
- Failure to make timely changes in a program UMTA did not approve as submitted under § 27.85, such that UMTA can approve the program as consistent with this regulation;
- Failure to provide service, as required under § 27.87;
- Failure to submit a "slippage report" in the circumstances in which § 27.89(c) requires one;
- Failure by a small recipient to certify, provide for public participation, or provide reports as required under § 27.91.

The OMB Paperwork Reduction Act number for the information collection requirements in Subpart E is 2132–0530.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 27 and 609

[Docket No. 56d; Notice 86-5]

Nondiscrimination on the Basis of Handicap in Department of Transportation Financial Assistance Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) requests comment on proposed requirements for service to handicapped persons on commuter rail systems. The proposed rule would implement section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and section 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)) in commuter rail programs receiving financial assistance from the Department. The notice also proposes to remove 49 CFR Part 609 and incorporate certain of its provisions into 49 CFR Part 27.

DATE: Comments should be received by August 21, 1986.

ADDRESS: Comments should be addressed to Docket Clerk, Docket 56d, Department of Transportation, Room 4107, 400 7th Street, SW., Washington, DC, 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comment. The Docket Clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 7th Street, SW., Washington, DC 20590; (202) 426-4723 (voice) or (202) 755-7687 (TDD). The Department of Transportation is currently installing a new telephone system. As a result, the voice number is expected to change, during July 1986, to (202) 366-9305. The TDD number is not expected to change. This NPRM has been taped for use by visually-impaired persons. Requests for taped copies of the rule should be made to Mr. Ashby.

SUPPLEMENTARY INFORMATION: The purpose of this NPRM is to request comments on several actions the Department is considering taking that are related to the final rule published today on mass transit services for handicapped persons. The September 3, 1983, NPRM that led to the final rule did not request comments on these specific proposals, and we received few comments relating to them. In addition, with respect to requirements for commuter rail systems, the Department does not have, at the present time, the information and analysis we need to decide whether to promulgate a final rule.

Commuter Rail

The preamble to the NPRM asked what, if any, provisions the regulation should include concerning commuter rail operations. The preamble also asked what form such a provision should take (e.g., a requirement for key station accessibility, special service, or a choice between the two).

Virtually all the handicapped commenters on this issue objected to the absence of specific commuter rail provisions from the NPRM, saying that commuter rail systems should be required to be fully accessible or that some alternative service be mandated. Some of these comments suggested that commuter rail services be required to meet the same criteria as other urban mass transit services. Others said that the interface between commuter rail and urban mass transit systems should also be required to be accessible, lest transfers from one to the other be precluded. A few social service organizations and other commenters took similar positions.

The relatively few transit industry comments suggested either that there be no commuter rail provisions in the final rule or that, if there were such requirements, the type of service be determined locally. Some transit industry comments also favored being able to count commuter rail accessibility costs toward the cost cap.

A few comments, from commenters in various categories, favored the "key stations/accessible rail vehicles" approach to commuter rail service. Others favored alternative service as a substitute for, or addition to, accessible mainline service.

In the final rule published today, the Department decided against requiring recipients to make urban mass transit rail systems, such as subways, other rapid rail systems, and light rail systems, accessible. Urban subway, rapid rail, and light rail systems provide service within an urbanized area which, in most cases, is also served by a recipient's bus system. An accessible bus system, or a special service system meeting service criteria keyed to the bus system, can provide service to handicapped persons throughout the area in which rail service is available to the general public.

Commuter rail may be a different case. While portions of commuter rail lines obviously lie within urbanized areas served by urban mass transportation systems, the major function of commuter rail lines is to bring commuters to an urban center from exurban areas often far outside the area served by urban mass transit bus or rail systems. A handicapped commuter living outside the urban mass transit service area would have no UMTA-assisted commuter rail service available to him or her at all, unless the commuter rail service itself were accessible or some substitute were provided for it. Consequently, the Department has decided to consider adding commuter rail requirements.

It should be emphasized that the Department has not made a decision concerning what, if any, commuter rail requirements we should promulgate. Therefore, we are proposing for comment various alternative provisions on important commuter rail issues. These options include mainline accessibility with all stations or with key stations made accessible, substitute service, and a provision that would allow recipients to choose between mainline accessibility and substitute service. The Department also seeks comment on other alternatives. If it appears that there is not sufficient justification for imposing commuter rail requirements, the Department could also decide not to promulgate a final rule on this subject.

The commuter rail provisions proposed in this NPRM include the following:

Section 27.5 Definitions. The definition of commuter rail, originally published as part of the Department's 1979 section 504 rule, and deleted by the July 1981 interim final rule (since it did not refer to commuter rail systems), would be restored. Because the vehicle standards proposed for incorporation from 49 CFR Part 609 (see discussion below) refer to "rapid rail" and "light rail," those definitions would likewise be restored.

Section 27.81 Program Requirement. A new paragraph (b) added to the end of this section would make the requirement to have a program under Subpart E of 49 CFR Part 27 applicable to recipients of financial assistance from the Department for commuter rail systems.

Section 27.85 Submission and Review of Program. A sentence added to paragraph (a) of this section would provide that commuter rail operators

would make their program submissions by 12 months from the effective date of this admendment to Subpart E.

Section 27.95 Full Performance Level. The NPRM proposes a new paragraph (e) to this section, setting forth requirements for commuter rail service. The NPRM proposes five alternatives for comment.

The first alternative is to make key stations, and at least one car per train, accessible to handicapped persons. The "key station" idea was developed as part of the Department's 1979 section 504 rule, and its purpose is to result in the most important stations being made accessible without causing the recipient to incur the expense of making all stations accessible. The key station criteria are also drawn from the 1979 rule. The Department estimated, for purposes of the 1979 rule, that these criteria would result in about 40 percent of stations becoming accessible. The Department seeks comment on whether, if this alternative is adopted, these criteria should be modified.

Because making a commuter rail line accessible is likely to be a relatively capital-intensive effort, this option would give recipients 30 years, rather than six, to meet the service criteria. This lengthened compliance period, which also was drawn from the 1979 rule, is intended to make compliance through this approach financially less burdensome. However, the recipient would, as some comments suggested, have to provide interim service (e.g., by demand-responsive motor vehicle) during the 30-year phase-in period. The Department seeks comment on whether this phase-in period is appropriate for commuter rail.

The second alternative is similar to the first, except that all stations, rather than only key stations, would have to be accessible. This would result in greater convenience for disabled users, possibly increasing ridership. However, costs for recipients would also be higher than under the first option.

The third proposed approach to meeting commuter rail requirements is substitute service. Substitute service would involve providing service by accessible motor vehicle from the commuter rail station nearest or most convenient to the person's point of origin to the station nearest or most convenient to his or her destination. There would be the same maximum six-year phase-in period as for other modes of mass transit. As some commenters to the September 1983 NPRM suggested, this station-to-station service would have to meet the same six service cirteria that apply to other modes of service under Subpart E of the regulation. The language of the criteria would be modified slightly to fit the commuter rail context (e.g., to refer to commuter rail lines and stations).

The fourth option would allow recipients to choose between substitute service and accessible mainline service. This approach would let each recipient choose, for each of its commuter rail lines, to comply either by meeting the requirements for accessible mainline service (as in option 1 or 2) or the requirements for substitute service (as in option 3). The only constraint on the recipient's discretion would be that all of any given commuter rail line would have to comply in the same way. Under all of the options, a commuter rail line that already met the requirements of § 27.73 (requirements for intercity rail systems) would be deemed to comply with the commuter rail requirements.

The Department also seeks comment on other options or variations of the options described above. For example, should the Department require feeder service to transport handicapped persons to accessible commuter rail stations? To improve cost-effectiveness of service, should recipients be able to terminate their accessible rail or substitute service at the first connecting point with other urban mass transit services that handicapped persons can use? On the other hand, would requiring handicapped persons to transfer in this situation be too inconvenient? Other suggestions are welcome.

The fifth option under consideration is a no-action alternative, under which no commuter rail provision would be added to the rule.

It is the Department's understanding that, like other mass transit programs, Federally-assisted commuter rail systems use their UMTA assistance to support overall operations. The Federally-assisted program or activity, therefore, is the entire commuter rail system. Section 504 of the Rehabilitation Act of 1973 is a basis for imposing requirements only on the specific program or activity for which Federal assistance is provided. If a particular commuter rail line, for example, does not receive Federal financial assistance, it is not covered under section 504. This is true even if the operator receives Federal assistance for other activities.

Section 27.97 Limit on Required Expenditures. A number of commenters on the September 1983 NPRM suggested that the limit on required expenditures apply to commuter rail systems, or that costs of commuter rail services for handicapped persons count toward recipients' overall cost limit. For the same reasons that we applied a cost limit to other modes of service for disabled persons, we are proposing that a cost limit should apply to commuter rail. For purposes of this NPRM, we are proposing two options for how the cost limit would apply to commuter rail.

We are concerned that counting costs of both commuter rail accessibility or substitute service and urban accessible bus or special service toward the same limit on required expenditures could create problems, such as a lack of balance between commuter rail and urban transit expenditures, that could impede progress toward the full performance level in one of the systems. Consequently, the Department's first option is that recipients which have both commuter rail and other urban mass transit systems would calculate the limit on required expenditures separately for each.

The Department's second option would modify this approach somewhat. It is possible that, for some recipients who operate both commuter rail and other urban mass transit systems, it would be more cost-effective to divert resources from commuter rail accessibility to other transit services for handicapped persons. A provision permitting recipients to lower their commuter rail cost limit by an amount equivalent to expenditures above their urban mass transit cost limit could give recipients greater flexibility in such situations. The Department also seeks comment on whether, if such a system were put into place, there should be a limit to "transfers" of this kind.

Section 27.99 Eligible Expenses. This section would be amended to provide that the capital and operating expenses of substitute service systems for commuter rail, and the incremental capital and operating expenses of accessible commuter rail systems, are eligible expenses. They would be eligible with respect to the separate commuter rail cost limit. This section would also regard costs of compliance with the facility and vehicle standards of §§ 27.105 and 27.107 as eligible.

Questions for Regulatory Analysis. In preparing a regulatory impact analysis or evaluation concerning commuter rail service for disabled persons, the Department will seek information to answer the following questions, among others:

1. How many handicapped persons live in corridors now served by commuter rail systems?

2. How many of these persons are unable, by reason of handicap, to use the existing commuter rail service?

3. How many of these persons now use other means of transportation for

destinations served by commuter rail service (e.g., private cars, van pools)?

4. How many of these persons would be likely to use an accessible commuter rail service in which (a) key stations, or (b) all stations, were accessible?

5. How many of these persons would be likely to use a motor vehicle-based substitute service system?

6. Given the likely user population, how many annual trips by handicapped persons who cannot now use the commuter rail system would be generated by (a) an accessible commuter rail system with key stations accessible, (b) an accessible commuter rail system with all stations accessible, or (c) a motor vehicle-based substitute service system?

7. What are likely to be the incremental capital and operating costs (per year and over 30 years) of the three alternatives described in question 6?

8. What is the likelihood that the benefits (i.e., usage) of the various alternatives under discussion will justify the costs?

The Department requests assistance from commenters in providing information to help answer these and other relevant questions. The Department is aware of two significant studies on commuter rail accessibility that are now underway. The Department hopes to make use of these studies and, to the extent still relevant, data from studies the Department has conducted in the past (e.g., the so-called "321 Studies" conducted some years ago). If the information from these studies is not sufficient to enable the Department to make a final decision on this subject, we anticipate performing a study (analogous to those used in the Regulatory Impact Analysis for the final rule published today) that would provide the information needed as a basis for a final decision.

Withdrawal of 49 CFR Part 609

49 CFR Part 609 contains a variety of standards for vehicles and fixed facilities, as well as procedural sections concerning special efforts to be made in providing transportation services to handicapped persons. There has been some confusion about the legal status of this Part. The preamble to the Department's 1979 section 504 rule mentioned that Part 609 had been "superseded," but Part 609 was never withdrawn from the Code of Federal Regulations. The Department's July 1981 interim final rule withdrew the mass transit portion of the 1979 rule, noting that Part 609 had never been withdrawn but not otherwise clarifying its status.

The Department believes that many of the provisions of Part 609 are obsolete and/or cover matters now covered by the new Subpart E. For these reasons, these provisions should be withdrawn. On the other hand, as discussed below, the provisions of Part 609 concerning vehicle and facility standards and the reduced fare program are still important. They should be retained and any uncertainty about their legal status ended (it is the Department's position that they remain in effect). For these reasons, the Department is proposing to withdraw Part 609 and to add to the new 49 CFR Part 27, Subpart E, revised and updated versions of Part 609's vehicle and facility standards and reduced fare program provision.

Facility and Vehicle Standards; Reduced Fare Program

The Department proposes to add a new § 27.105 to the regulation, which would incorporate fixed facility standards now found in § 609.13. This inclusion responds to requests by commenters on the September 1983 NPRM for fixed facility standards in the rule. These standards have been in place for some time, are familiar to recipients, and are not onerous or costly to comply with. This section would contain a provision concerning the station-rail car interface, which a commenter cited as a continuing problem in some new rail systems.

The proposed § 27.107 would contain standards related to accessibility features for bus, rapid rail, light rail, and other vehicles. The four paragraphs of this section would incorporate the substance of §§ 609.15–609.21.

There would be only one substantive change in these provisions. The NPRM would delete § 609.15(a) through (c), which deals with the so-called "Transbus" specifications, which the Department determined, in 1979, could not practically be implemented, and a requirement for an accessibility option on all transit buses, which is obsolete in light of the publication of the new Subpart E. It should be pointed out that the standards of § 27.107 would apply to all new vehicles in the categories covered by the section, not just those that are purchased specifically to meet the full performance level of § 27.95.

The Department seeks comment on any additional accessibility features which should be included in these provisions, or any modifications or deletions which the Department should make to these provisions.

The current 49 CFR 609.23 requires recipients to provide half fares for elderly and handicapped persons during off-peak travel times. This provision would be incorporated in the new 49 CFR 27.109. The only change between the present and proposed version of the provision involved the substitution of a reference to the current section 9 program for a reference to the section 5 program, which it replaced.

Definition of "Accessible"

The Department is proposing to delete, from § 27.5, the definition of "accessible." The rationale for this proposal is that the specific requirements for various modes of transportation and facilities, together with the references to the Uniform Federal Accessibility Standards (UFAS) now incorporated in Part 27, make this definition unnecessary. The Department seeks comment on whether there is any remaining need for this definition.

Regulatory Process Matters

This NPRM is a significant regulation under the Department's Regulatory Policies and Procedures, since its commuter rail provisions may be costly and controversial. The rule may be a major rule under Executive Order 12291; because the Department does not have sufficient data concerning the costs of compliance with its proposed commuter rail requirements, we are unsure of whether it would result in costs of over $100 million per year. The Department does not have sufficient information on which to base a regulatory evaluation or impact analysis, and we have not prepared such a document at this time. If we decide to promulgate a final rule on commuter rail systems, we intend to prepare a regulatory evaluation or impact analysis, as appropriate.

The other proposals in this NPRM—concerning the withdrawal of Part 609 and incorporation of some of its provisions in Part 27—are not expected to have any significant economic impacts. They basically involve moving existing provisions to a different part of the Code of Federal Regulations. We do not anticipate preparing a regulatory impact analysis or evaluation on these subjects.

The Department certifies under the criteria of the Regulatory Flexibility Act that this proposal, if promulgated as a final rule, would not have a significant effect on a substantial number of small entities. Only the commuter rail portion of this NPRM would have a significant economic effect. There are no commuter rail operators, to our knowledge, that could be considered small entities.

This NPRM has been reviewed and approved by the Department of Justice under Executive Order 12250 and by the Office of Management and Budget under Executive Order 12291.

List of Subjects in 49 CFR Part 27

Handicapped, Mass transportation.

Issued this 19th day of May, 1986, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

For the reasons described in the preamble, the Department proposes the following:

PART 609—[REMOVED]

1. To amend Title 49, Code of Federal Regulations, by removing Part 609 thereof.

PART 27—[AMENDED]

1a. The authority citation for Part 27 continues to read:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142nt. Subpart E is also issued under sec. 317(c) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1612(d)).

§ 27.5 [Amended]

2. To amend § 27.5 ("Definitions"), in Title 49, Code of Federal Regulations, by adding the following paragraphs, to be inserted among the existing paragraphs in alphabetical order:

"Commuter rail" means that portion of mainline railroad transportation operations which encompasses urban passenger train services for local short-distance travel between a central city and adjacent suburbs and which is characterized by multi-trip tickets, specific station-to-station fares, railroad employment practices, and usually only one or two stations in the central business district.

"Light rail" means a streetcar type transit vehicle railway operated on city streets, semi-private rights-of-way, or exclusive private rights-of-way.

"Rapid rail" means a subway-type transit vehicle railway operated on exclusive rights-of-way with high-level platform stations.

3. To amend § 27.5 ("Definitions") in Title 49, Code of Federal Regulations, by deleting the definition of "accessible."

4. To amend § 27.81 ("Program Requirement"), in Title 49, Code of Federal Regulations, by designating the existing paragraph of this section as paragraph (a) thereof, and by adding the following paragraph (b):

§ 27.81 [Amended]

* * * * *

(b) Recipients of financial assistance from the Department of Transportation for commuter rail systems shall establish a program meeting the requirements of paragraph (a) of this section. However, a recipient is not required to establish such a program concerning any commuter rail line which, on the date the program would otherwise be due, is in full compliance with the requirements of 49 CFR 27.73.

5. To amend § 27.85 ("Submission and Review of Program"), in Title 49, Code of Federal Regulations, by adding the following paragraph (d):

§ 27.85 [Amended]

* * * * *

(d) (1) With respect to commuter rail systems, commuter rail operators shall submit their programs and supporting materials within 12 months of the effective date of this paragraph.

(2) A commuter rail operator which, because a commuter rail line is in full compliance with 49 CFR 27.73 within 12 months of the effective date of this paragraph, is not required to establish a program with respect to that line shall submit, in lieu of a program, a certification of its compliance with § 27.73.

(3) If a commuter rail operator receives its federal financial assistance from the Federal Railroad Administration (FRA) rather than from UMTA, the recipient shall submit all required materials to FRA.

6. To amend § 27.95 ("Full Performance Level"), in Title 49, Code of Federal Regulations, by adding a new paragraph (f), to read as follows:

§ 27.95 [Amended]

* * * * *

Option 1

(f) *Criteria for Commuter Rail Systems.* The criteria applicable to each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation are the following:

(1) All stations shall be accessible to handicapped persons who can use steps, and key stations shall be accessible to wheelchair users. For purposes of commuter rail service, key stations are those that are:

(i) Transfer points on a rail line or between rail lines:

(ii) Major interchange points with other transportation modes;

(iii) End stations, unless an end station is close to another accessible station;

(iv) Stations serving major activity centers, including government and employment centers, institutions of higher education, and hospitals or other major health care facilities;

(v) Stations that are special trip generators for large numbers of handicapped persons; and

(vi) Stations that are distant from other accessible stations.

(2) Existing key stations shall be deemed to be accessible for purposes of this paragraph if they—

(i) Include, or are altered to include, the features listed in sections 4.1.6(3)(a)—(d) and section 4.1.6(4) of the standards referenced in § 27.67(d) of this Part; and

(ii) Include the features described in § 27.73(a)(1)(ii) of this Part.

(3) Existing non-key stations shall be deemed to be accessible if they meet the requirements applicable to key stations, except that otherwise accessible routes that do not comply with section 4.3.8 of the standards referenced in § 27.67(d) of this Part shall comply with sections 4.9.2—4.9.6 of those standards.

(4) All vehicles shall be accessible to handicapped persons who can use steps, and at least one vehicle per train must be accessible to wheelchair users. All vehicles on commuter rail trains shall have clearly marked priority seating for handicapped persons, and vehicles accessible to wheelchair users shall display the international accessibility symbol.

(5) The fares charged handicapped persons using the accessible commuter rail service shall be no higher than those charged other users for a trip between the same stations at the same time. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on the accessible commuter rail service.

(6) The recipient shall ensure that each accessible commuter rail line meets the requirements of this section by a date 30 years from the date UMTA approves its program. In the meantime, the recipient shall provide interim service by accessible motor vehicle which meets a significant fraction of the actual transportation needs of handicapped persons who cannot use the commuter rail line until it is made accessible.

Option 2

(f) *Criteria for Commuter Rail Systems.* The criteria applicable to each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation are the following:

(1) All stations shall be accessible to handicapped persons who can use steps and to wheelchair users.

(2) Stations shall be deemed to be accessible for purposes of this paragraph if they

(i) Include, or are altered to include, the features listed in sections 4.1.6(3)(a)—(d) and section 4.1.6(4) of the standards referenced in § 27.67(d) of this Part; and

(ii) Include the features described in § 27.73(a)(1)(ii) of this Part.

(3) All vehicles shall be accessible to handicapped persons who can use steps, and at least one vehicle per train must be accessible to wheelchair users. All vehicles on commuter rail trains shall have clearly marked priority seating for handicapped persons, and vehicles accessible to wheelchair users shall display the international accessibility symbol.

(4) The fares charged handicapped persons using the accessible commuter rail service shall be no higher than those charged other users for a trip between the same stations at the same time. Reduced, off-peak fares for elderly and handicapped persons shall be in effect on the accessible commuter rail service.

(5) The recipient shall ensure that each accessible commuter rail line meets the requirements of this section by a date 30 years from the date UMTA approves its program. In the meantime, the recipient shall provide interim service by accessible motor vehicle which meets a significant fraction of the actual transportation needs of handicapped persons who cannot use the commuter rail line until it is made accessible.

Option 3

(f) *Criteria for Commuter Rail Systems.* Each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation shall provide, on the request of an eligible handicapped person, substitute service by accessible motor vehicle from the commuter rail station nearest or most convenient to the handicapped person's point of origin to the commuter rail station nearest or most convenient to the person's destination. The substitute service shall meet the following service criteria:

(1) *Eligibility.* All persons who, by reason of handicap, are physically unable to use the recipient's commuter rail system shall be eligible to use the recipient's substitute service.

(2) *Response Time.* The recipient shall ensure that service is provided to a handicapped person who requests it within 24 hours of the request.

(3) *Restrictions or Priorities Based on Trip Purpose.* The recipient shall not impose priorities or restrictions based on trip purpose on users of the substitute service.

(4) *Service Area.* Substitute service shall be provided, upon request, among all stations served by the recipient's commuter rail service.

(5) *Fares.* The fare for a trip charged a handicapped person using the substitute service shall be comparable to that charged other users of the recipient's commuter rail service for a trip between the same stations at the same time.

(6) *Hours and Days of Service.* Substitute service shall be available throughout the same days and hours as the recipient's commuter rail service for the general public.

Option 4

(f) *Criteria for Commuter Rail Systems.* Each commuter rail line on a commuter rail system receiving financial assistance from the Department of Transportation shall consist of meeting the criteria of either subparagraph (1) [i.e., requirements for mainline accessibility] or subparagraph (2) [i.e., requirements for substitute service] of this paragraph. Each line shall meet the requirements of the applicable subparagraph for its entire length. A commuter rail line which is in full compliance with the requirements of § 27.73 shall be deemed to comply with this paragraph.

Option 5

No further regulatory action.

7. To amend § 27.97 ("Limit on Required Expenditures") in Title 49, Code of Federal Regulations, by adding a new paragraph (d), to read as follows:

§ 27.97 [Amended]

* * * * *

Option 1

(d) *Commuter Rail.* The limit on required expenditures for commuter rail service shall be computed separately by any recipient that provides both commuter rail service and urban mass transportation service by bus or other means.

Option 2

(d) *Commuter Rail.* The limit on required expenditures for commuter rail service shall be computed separately by any recipient that provides both commuter rail service and urban mass transportation service by bus or other means. *Provided,* that such a recipient may reduce the amount of its commuter rail limit on required expenditures for a given fiscal year by the amount in excess of its limit on required expenditures for other mass transit services for handicapped persons it expended for such services in the previous fiscal year.

§ 27.99 [Amended]

8. To amend § 27.99 ("Eligible Expenses") in Title 49, Code of Federal Regulations, by removing, in paragraph (b)(5) thereof, the words "49 CFR 609.23." and substituting the words "49 CFR 27.109."

9. To amend § 27.99 ("Eligible Expenses"), in Title 49, Code of Federal Regulations, by adding new subparagraphs (b)(7) and (b)(8) thereof, to read as follows:

(b) * * *

(7) Capital and operating costs of substitute service systems for commuter rail; incremental capital and operating costs of accessible commuter rail systems.

(8) Incremental costs of compliance with §§ 27.105 and 27.107 of this Subpart.

10. To amend Subpart E, in Title 49, Code of Federal Regulations, Part 27, by adding new §§ 27.105, 27.107, and 27.109, to read as follows:

§ 27.105 Standards for fixed facilities.

(a) Except as otherwise provided in paragraph (c) of this section, every fixed facility—including every station, terminal, building or other facility—designed, constructed, or altered after the effective date of this section with UMTA assistance, the intended use for which either will require that such fixed facility be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed, constructed, or altered in accordance with the accessibility standards referenced in § 27.67(d) of this Part.

(b) In addition to the standards of paragraph (a) of this section, the following standards apply to rail facilities covered by that paragraph:

(1) *Travel distance for wheelchair users.* In designing new underground or elevated transit stations, careful attention should be given to the location and number of elevators or other vertical circulation devices in order to minimize the extra distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to nonhandicapped persons.

(2) *International accessibility symbol.* The international accessibility symbol shall be displayed at wheelchair accessible entrance(s) to buildings that meet the standards.

(3) *Fare vending and collection systems.* Transit fare vending and collection systems shall be designed so as not to prevent effective utilization of the transportation system by elderly and

handicapped persons. Each station shall include a fare control area with at least one entrance with a clear opening at least 32 inches wide when open.

(4) *Boarding platforms.* All boarding platform edges bordering a drop-off or other dangerous condition shall be marked with a warning device consisting of a strip of floor material differing in color and texture from the remaining floor surface. The design of boarding platforms for level-entry vehicles shall be coordinated with the vehicle design in order to minimize the gap between platform and vehicle doorway and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(c) The standards established in paragraphs (a) and (b) of this section do not apply to:

(1) The design, construction, or alteration of any portion of a fixed facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing fixed facility to the extent that the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installation or improvements to accommodate the physically handicapped (the standards do not apply to unaltered elements or spaces of an existing fixed facility except as called for by section 4.1.6(3), of the standards referenced in § 27.67(d)(2);

(3) The alteration of an existing fixed facility, or of such portions thereof, to which application of the standards is not structurally possible; and

(4) The construction or alteration of a fixed facility for which a recipient has, prior to the effective date of this section, issued a formal invitation for bids to perform such construction or alteration.

(d) The final project application for any project that includes the design, construction, or alteration of a fixed facility subject to paragraph (a) of this section shall contain one of the following: (1) An assurance that the standards of paragraph (a) of this section will be adhered to in the design, construction, or alteration of such facility; (2) a request for a finding that the project is within one of the exceptions set out in paragraph (c) of this section (the specific exception being identified), with appropriate supporting material; or (3) a request pursuant to § 27.101 for the technical exemption from the standards of paragraphs (a) and (b) of this section, with appropriate supporting material (including, where applicable, a request for a waiver of the requirements of the Architectural Barriers Act of 1968, as amended).

§ 27.107 Standards for vehicles.

(a) *Buses.* The following standards apply to all new transit buses exceeding 22 feet in length for which procurement solicitations are issued after the date this section becomes effective:

(1) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that seats in the front of the vehicle are priority seats for elderly and handicapped persons, and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(2) *Interior handrails and stanchions.* (i) Handrails and stanchions shall be provided in the entranceway to the vehicle in a configuration which allows elderly and handicapped persons to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding and fare collection processes. The configuration of the passenger assist system shall include a rail across the front of the interior of the vehicle which shall serve both as an assist and as a barrier to reduce the possibility of passengers sustaining injuries on the fare collection device or windshield in the event of sudden deceleration. The rail shall be located to allow passengers to lean against it for security while paying fares.

(ii) Overhead handrails shall be provided which shall be continuous except for a gap at the rear doorway.

(iii) Handrails and stanchions shall be provided which shall be sufficient to permit safe onboard circulation, seating and standing assistance, and upboarding by elderly and handicapped persons.

(3) *Floor and step surfaces.* (i) All floors and steps shall have slip-resistant surfaces.

(ii) All step edges shall have a band of bright contrasting color(s) running the full width of the step.

(4) *Lighting.* (i) Any stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(ii) Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(iii) The vehicle doorways shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

(5) *Fare collection.* The farebox shall be located as far forward as practicable and shall not obstruct traffic in the vestibule.

(6) *Destination and route signs.* Each vehicle shall have illuminated signs on the front and boarding side of the vehicle.

(b) *Rapid Rail Vehicles.* The following standards apply to all rapid rail vehicles for which procurement solicitations are issued after the effective date of this section:

(1) *Doorways.* (i) Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open.

(ii) The international accessibility symbol shall be displayed on the exterior of each vehicle operating on a wheelchair accessible rapid rail system.

(iii) Audible warning signals shall be provided to alert elderly and handicapped persons of closing doors.

(iv) Where the vehicle will operate in a wheelchair accessible station, the design of vehicles shall be coordinated with the boarding platform design in order to minimize the gap between vehicle doorway and the platform and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(2) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that certain seats are priority seats for elderly and handicapped persons and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(3) *Interior handrails and stanchions.* (i) Handrails and stanchions shall be sufficient to permit safe boarding, onboard circulation, seating and standing assistance, and unboarding by elderly and handicapped persons.

(ii) Handrails, stanchions, and seats shall be located so as to allow a wheelchair user to enter the vehicle and position the wheelchair in a location which does not obstruct the movement of other passengers.

(iii) *Floor surfaces.* All floors shall have slip-resistant surfaces.

(c) *Light Rail Vehicles.* The following standards apply to all light rail vehicles for which procurement solicitations are issued after the effective date of this section:

(1) *Doorways.* (i) Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open.

(ii) The international accessibility symbol shall be displayed on the exterior of each vehicle operating on a wheelchair accessible light rail system.

(iii) Audible warning signals shall be provided to alert elderly and handicapped persons of closing doors.

(iv) The design of level-entry vehicles shall be coordinated with the boarding platform design in order to minimize the gap between the vehicle doorway and the platform and to permit safe passage by wheelchair users and other elderly and handicapped persons.

(2) *Priority seating signs.* In order to maximize the safety of elderly and handicapped persons, each vehicle shall contain clearly legible signs which indicate that certain seats are priority seats for elderly and handicapped persons and which encourage other passengers to make such seats available to elderly and handicapped persons who wish to use them.

(3) *Interior handrails and stanchions.* (i) On vehicles which require use of steps in the boarding process, handrails and stanchions shall be provided in the entranceway to the vehicle in a configuration which allows elderly and handicapped persons to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process.

(ii) On level-entry vehicles, handrails, stanchions, and seats shall be located so as to allow a wheelchair user to enter the vehicle and position the wheelchair in a location which does not obstruct the movement of other passengers.

(iii) On all vehicles, handrails and stanchions shall be sufficient to permit safe boarding, onboard circulation, seating and standing assistance, and unboarding by elderly and handicapped persons.

(4) *Floor and step surfaces.* (i) All floors and steps shall have slip-resistant surfaces.

(ii) Any step edges shall have a band of bright contrasting color(s) running the full width of the step.

(5) *Lighting in step-entry.* (i) Any stepwell immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(ii) Other stepwells shall have, at all times, at least 2 foot-candles of illumination measured on the step tread.

(iii) The vehicle doorways shall have outside lights which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

(d) *Other Vehicles.* Requirements for vehicles not covered by this section will be determined by UMTA on a case-by-case basis as part of the project approval process.

§ 27.109 Reduced fares.

Applicants for or recipients of financial assistance under section 9 of the Urban Mass Transportation Act of 1964, as amended, shall, as a condition of receiving such assistance, give satisfactory assurances, in such manner and form as may be required by the Urban Mass Transportation Administrator, that the rates charged elderly and handicapped persons during nonpeak hours for transportation utilizing or involving the facilities and equipment of the project financed with assistance under section 9 will not exceed one-half of the rates generally applicable to other persons at peak hours, whether the operation of such facilities and equipment is by the applicant or is by another entity under lease or otherwise.

[FR Doc 86-11572 Filed 5-20-86; 8:45 am]

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federal register

Friday
May 23, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 67

Review of Medical Standards and Certification Procedures; Availability of Report and Request for Comments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

[Docket No. 23190]

Review of Medical Standards and Certification Procedures; Availability of Report and Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of the availability of a report and request for comments.

SUMMARY: This notice announces the availability of a report by the American Medical Association on its professional review of the medical standards for civil airmen. The report was produced as part of the Federal Aviation Administration's comprehensive review of the medical standards contained in Part 67 of the Federal Aviation Regulations. Interested persons are invited to submit comments.

DATES: Comments should be submitted on or before August 21, 1986.

ADDRESS: Comments regarding this report may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23190, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: William H. Hark, M.D., Aeromedical Standards Division (AAM-200), Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 426-3802.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1982, the Federal Air Surgeon announced (47 FR 30795; July 15, 1982) the initial step of a comprehensive review of the medical standards contained in Part 67 of the Federal Aviation Regulations (FAR). Interested persons were invited to submit to the Federal Aviation Administration (FAA) (Docket No. 23190) for consideration during future rulemaking actions any comments or suggestions, either on a specific section or sections or on Part 67 in general. That docket will remain open until the date specified under **"DATES,"** above. All comments received are available for inspection in the FAA Rules Docket.

As part of the review process, the FAA initiated a contract with the American Medical Association (AMA) for provision of the necessary professional and technical information. The FAA specified that the AMA's final report detail the results of a total and comprehensive review of the medical standards for airman medical certification and their application to enable the FAA to determine the medical fitness of applicants for exercise of airman privileges. The FAA directed that the report consider pertinent advances in the field of medicine since 1959, determine what changes in FAA medical standards, if any, are warranted, and explain the rationale for such changes.

The AMA presented its report, "Review of Part 67 of the Federal Air Regulations and the Medical Certification of Civilian Airmen," on March 26, 1986. A synopsis of the 750-page, 2-volume study was published in the Journal of the American Medical Association (JAMA Vol. 255, No. 12, pp. 1589-1599) on March 28, 1986, and is available at many libraries. Copies of the synopsis also may be obtained without charge from Alan L. Engelberg, M.D., Department of Public Health Policy, American Medical Association, 535 North Dearborn Street, Chicago, Illinois 60610, or from William H. Hark, M.D., Aeromedical Standards Division (AAM-200), Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Copies of the full report will be available from Dr. Hark until July 1, 1986. A check in the amount of $37.70, payable to the Treasurer of the United States, must accompany all requests for the full report. After July 1, 1986, the full report will be available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 (accession numbers AD A166 464, Volume I, and AD A166 465, Volume II).

Comments Invited

Interested persons are invited to submit comments or suggestions, either on a specific section or sections of the FAR or to the AMA report in general. Comments should include the commenter's name and specifically identify the section of the FAR or the element of the AMA report being addressed. Comments will not be answered individually but will be considered during future rulemaking actions. All comments received will be available for inspection in the FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC, between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays. Persons who wish their comments to be considered should submit them on or before the close of the comment period indicated under **"DATES,"** above.

Persons interested in being placed on the mailing list for future rulemaking actions resulting from this review should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure. The advisory circular may be obtained by writing to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue SW., Washington, DC 20591 or by calling (202) 426-8056.

Issued in Washington, DC, on May 16, 1986.

Frank H. Austin, Jr.,

Federal Air Surgeon.

[FR Doc. 86-11602 Filed 5-22-86; 8:45 am]

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federal register

Friday
May 23, 1986

Part IV

Department of the Interior

Minerals Management Service

Gulf of Mexico OCS Region; Proposed 1988 Lease Sales; Call for Information and Nominations and Notice of Intent To Prepare an Environmental Impact Statement

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Proposed 1988 Lease Sales in the
Gulf of Mexico OCS Region
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1343), as amended, and regulations appearing at 30 CFR 256.23 with regard to proposed OCS Lease Sales 113, 115, and 116, tentatively scheduled for March, August, and November 1988, respectively. The proposed lease sales are identified in the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for January 1987 through December 1991, dated February 1986.

This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. It should be recognized that this Notice does not indicate a preliminary decision to lease in the areas described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the next step in the planning process--Area Identification--to resolve conflicts by deleting areas where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the environmental impact statement (EIS). The Area Identification is scheduled for August 1986.

A third purpose for this Notice is to use the comments collected to initiate scoping of the EIS, which will include public meetings, and to identify and analyze alternatives to the proposed action. A Notice of Intent to Prepare an EIS which covers scoping is located later in this document. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used in understanding and considering ways to avoid or mitigate potential conflicts between offshore oil and gas activities and the Gulf Coast States' Coastal Management Programs (CMP).

Description of Area

The general area of this Call covers the entire Gulf of Mexico which lies between approximately 81° W. longitude on the east and approximately 97° W. longitude on the west and extends from the Federal-State boundaries seaward to approximately 26° N. latitude and to approximately 24° N. latitude for southwest Florida. The entire Call area is offshore the states of Texas, Louisiana, Mississippi, Alabama, and Florida. This area is divided into three planning areas for individual 1988 lease sales in the Central, Western, and Eastern Gulf of Mexico.

The Central Gulf of Mexico (CGOM) planning area is bounded on the east by approximately 88° W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28° N. latitude, thence east to approximately 92° W. longitude, and thence south to approximately 26° N. latitude. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area extends south to approximately 26° N. latitude.

The Western Gulf of Mexico (WGOM) planning area is bounded on the west and north by the Federal-State boundary and on the east by the Central Gulf of Mexico planning area. The area extends south to approximately 26° N. latitude.

The Eastern Gulf of Mexico (EGOM) planning area is described as follows: South from the territorial sea at approximately 87° 45' W. longitude to approximately 29° N. latitude thence west to approximately 87° 55' W. longitude thence south to approximately 26° N. latitude thence east to approximately 85° 55' W. longitude thence south to the limit of U.S. jurisdiction thence southeast to approximately 83° 55' W. longitude at approximately 23° 55' N. latitude thence east to 83° W. longitude thence north to the limits of the territorial sea thence east to approximately 82° 25' W. longitude thence north and east along the territorial sea to the limits of U.S. jurisdiction thence along the territorial sea to the point of origin.

The following list comprises the Leasing Maps and the OCS Official Protraction Diagrams used in identifying this Call area. These maps and diagrams may be purchased from the Public Information Unit, Gulf of Mexico OCS Region, at the address stated below under "Instructions on Call".

1. Central Gulf of Mexico (CGOM)

Leasing Maps

Outer Continental Shelf Leasing Maps - Louisiana Nos. 1 through 12.

This set of 27 maps sells for $17.00.

Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each.

		Revision Date
NH 15-12	Ewing Bank	December 2, 1976
NH 16-4	Mobile	April 19, 1983
NH 16-7	Viosca Knoll	December 2, 1976
NH 16-10	Mississippi Canyon	December 2, 1976
NG 15-3	Green Canyon	December 2, 1976
NG 15-6	Walker Ridge	December 2, 1976
NG 16-1	Atwater Valley	November 10, 1983
NG 16-4	(No Name)	December 2, 1976

2. Western Gulf of Mexico (WGOM)

Leasing Maps

Outer Continental Shelf Leasing Maps - South Texas Nos. 1 through 4. This set of seven maps sells for $5.00

Outer Continental Shelf Leasing Maps - East Texas Nos. 5 through 8. This set of nine maps sells for $7.00.

Outer Continental Shelf Official Protraction Diagrams

These diagrams sell for $2.00 each.

		Revision Date
NG 14-3	Corpus Christi	January 27, 1976
NG 14-6	Port Isabel	January 27, 1976
NG 15-1	East Breaks	January 27, 1976
NG 15-2	Garden Banks	December 2, 1976
NG 15-4	Alaminos Canyon	March 26, 1976
NG 15-5	Keathley Canyon	December 2, 1976

3. Eastern Gulf of Mexico (EGOM)

Outer Continental Shelf Official Protraction Diagrams

These Diagrams sell for $2.00 each.

		Approval or Revision Date
NG 16-3	The Elbow	Revised December 2, 1976
NG 16-5	(No Name)	Approved December 2, 1976
NG 16-6	Vernon Basin	Revised November 10, 1983
NG 16-9	Howell Hook	Approved April 18, 1979
NG 16-12	Rankin	Revised December 16, 1985

		Approval or Revision Date
NG 17-1	St. Petersburg	Revised June 2, 1983
NG 17-4	Charlotte Harbor	Revised June 2, 1983
NG 17-7	Pulley Ridge	Approved October 24, 1978
NG 17-8	Miami	Approved October 24, 1978
NG 17-10	Dry Tortugas	Approved April 8, 1981
NG 17-11	Key West	Approved January 29, 1979
NH 16-5	Pensacola	Revised June 2, 1983
NH 16-8	Destin Dome	Revised December 2, 1976
NH 16-9	Apalachicola	Revised June 2, 1983
NH 16-11	DeSoto Canyon	Revised December 2, 1976
NH 16-12	Florida Middle Ground	Revised December 2, 1976
NH 17-7	Gainesville	Revised June 2, 1983
NH 17-10	Tarpon Springs	Revised June 2, 1983

Areas Deferred from this Call

1. Seagrass beds - offshore Florida (EGOM).

2. Florida Middle Ground - offshore Florida (EGOM).

3. Naval Deferral Area, in NH 16-8, Destin Dome Area, includes the following blocks (EGOM) deferred for carrier operations in Warning Area W-155.

Blocks	Blocks
133 through 148	485 through 500
177 through 192	529 through 544
221 through 234	573 through 588
265 through 279	618 through 632
309 through 324	662 through 676
353 through 368	705 through 720
397 through 412	749 through 764
441 through 456	793 through 808

4. High Island Area, East Addition, South Extension, dated October 19, 1981, (Flower Gardens), Block A-375 and Block A-398 (WGOM).

Instructions on Call

A standard Call map specific to this event delineates the Call area and shows the area identified by the Minerals Management Service (MMS) as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in the 1988 Lease Sales. Boundaries of the Call area are shown on the standard Call for Information Map available free from the Public Information

Unit, Gulf of Mexico OCS Region, Minerals Management Service, Post Office Box 7944, 3301 N. Causeway Blvd., Metairie, Louisiana 70010, telephone (504) 838-0519. Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map. Interest should be shown by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area in which respondents have no interest, no priority should be assigned to them. Areas where interest has been indicated but on which respondents have not indicated any priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Information concerning both location and priority of interest submitted by individual companies will be held proprietary and will be used as criteria in determining the areas to be analyzed in the EIS. In addition to the indications of interest by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use conditions.

Comments are requested on the technology presently available or anticipated for exploration and development operations in deepwater areas.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological, socioeconomic conditions, conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State CMP's. If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in the terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to outline the subject area on the standard Call map.

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed 1988 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1988 Lease Sales in the Gulf of Mexico."

The standard Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above under "Instructions on Call."

Tentative Schedule

Final delineation of the areas for possible leasing will be made at a later date only after compliance with established Departmental procedures, all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and the OCSLA, as amended. A final Notice of Sale for each sale held will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede these sales, proposed for 1988:

	CGOM Sale 113	WGOM Sale 115	EGOM Sale 116
Comments due on the Call	July 1986	July 1986	July 1986
Area Identification	August 1986	August 1986	August 1986
Scoping comments due	July 1986	July 1986	July 1986
Draft EIS published	April 1987	April 1987	April 1987
Hearings held on draft EIS	May 1987	May 1987	May 1987
Final EIS published	October 1987	October 1987	October 1987
Proposed Notice of Sale published	November 1987	April 1988	July 1988
Governor's comments due on proposed Notice	January 1988	June 1988	September 1988
Final Notice of Sale published	February 1988	July 1988	October 1988
Sale	March 1988	August 1988	November 1988

Existing Information

Information already available includes that previously gathered during the EIS process for the Proposed 5-Year Oil and Gas Leasing Program. In addition, comments previously received by the DOI from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry concerning past OCS actions will be used. The following is a list of other information which will be available to the DOI for consideration regarding the proposed 1988 OCS Lease Sales in the Gulf of Mexico.

Gulf of Mexico Indices and Summary Reports

1. Gulf of Mexico Index, December 1980 through August 1982, prepared for MMS.

2. Gulf of Mexico Index, September 1982 through July 1983, prepared for MMS.

3. Gulf of Mexico Summary Report, September 1983, prepared for MMS.

4. Gulf of Mexico Summary Report, September 1984, prepared for MMS.

5. Gulf of Mexico Summary Report, September 1985, prepared for MMS.

Environmental Studies Program Information in the Central, Western, and Eastern Gulf of Mexico

The DOI initiated studies in these areas in 1973. The emphasis, including continuing studies, has been on geological mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean circulation modeling, and ecological effects of oil and gas activities. These studies will provide useful information for a number of environmental issues, including topographic features, deepwater biological communities on the continental slope, and coastal wetland habitats.

A complete listing of available study reports and information for ordering copies can be obtained from the Gulf of Mexico Regional Office at the address stated under "Instructions on Call," or by telephone at (504) 838-0519, Public Information Unit. The reports may also be ordered for a fee directly from the National Technical Information Service by calling (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico Regional Office at the address stated under "Instructions on Call" or by telephone at (504) 838-0896.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulation (40 CFR 1501.7) implementing the procedural provision of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposals known as Sale 113 in the Central Gulf of Mexico, Sale 115 in the Western Gulf of Mexico, and Sale 116 in the Eastern Gulf of Mexico . The Notice of Intent also serves to announce the scoping process which will be followed for the EIS. The scoping process is intended to involve Federal, State and local governments and other interested parties in aiding the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives which should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Instructions on Call" above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Proposed 1988 Lease Sales in the Gulf of Mexico. Comments are due no later than 45 days from the publication of this Notice. Also, scoping meetings will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS. The times and locations of these scoping meetings will be announced at a future date in the Federal Register and by press release.

Wm D Bettenberg

Director, Minerals Management Service

Wm. D. Bettenberg

Approved:

J. Steven Griles

Assistant Secretary - Land and Minerals Management

MAY 20 1986

Date

8

[FR Doc. 86-11726 Filed 5-22-86; 8:45 am]

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Federal Register

Friday
May 23, 1986

Part V

Department of Energy

Minority Economic Impact Office

Minority Educational Institution Assistance Program; Notice

DEPARTMENT OF ENERGY

Office of Minority Economic Impact

Minority Educational Institution Assistance Program

AGENCY: Office of Minority Economic Impact, Energy.

ACTION: Notice of Program Interest.

General Information

The Department of Energy (DOE), Office of Minority Economic Impact, through the Oak Ridge Operations Office, in order to further the Office's goals of providing technical assistance to minority educational institutions, desires to encourage the submission of unsolicited proposals in support of the Department's Minority Educational Institution Assistanc Program at minority educational institutions. Such support is authorized by 42 U.S.C. 7141(d) and 7256(a); Executive Order 12320, which states that the Director of the Office of Minority Economic Impact may provide technical assistance to minority educational institutions. It is intended, in particular, to obtain proposals relating to the objectives identified below, from qualified minority educational institutions, or from teams of organizations including minority educational institutions. For purposes of this notice, a qualified minority educational institution is a school of higher learning (such as a college or university) that is a non-profit entity with more than 50 percent total minority enrollment. This notice describes the principal scope of the activity and provides some guidance on submitting proposals.

Nature of Proposals Sought

With this notice, it is DOE's intent to stimulate proposals for minority educational institution assistance for management and technical infrastructure support that would address the following program objectives:

1. Initiate energy-related research and development collaboration using the cluster model involving minority educational institutions.
2. Develop energy-related science and technology research centers at minority educational institutions.
3. Identify and institute arrangements between minority educational institutions that expand the private sector support provided to these institutions.
4. Develop linkages between minority community, technical, and junior colleges and minority four-year institutions to increase the pool of minorities engaged in science and technology.
5. Support the development of joint activities between minority educational institutions and the private sector.

Eligibility

Institution

To be eligible to participate in this program, an institution must have more than 50 percent minority enrollment, and award a masters degree or doctoral degree in the physical sciences or engineering. This program is open only to institutions within the United States and its territories. Institutions having more than one eligible component may choose whether to apply on behalf of the institution as a whole or to submit freestanding applications on behalf of one or more components. Individual components of a university, university system, or other institution are separately eligible.

Principal Investigator

The Principal Investigator should be the President/Chancellor of the applicant institution or another high-ranking official designated as the surrogate for the purpose of this award. The Principal Investigator is the representative and spokesperson for the institution in matters concerning the award. The Principal Investigator should be available for consultation with the Program Manager and assist in resolving issues or problems encountered by the Program Manager in the management of the project.

Award Size and Duration

The FY 1986 budget for this program is $300,000, and the FY 1987 budget is $350,000. It is estimated that these combined funds will support awards as follows:

1. Infrastructure Support—Two awards over a 24-month period.
2. Private Sector Interrelationships—Two awards over an 18-month period.

These estimates do not bind the U.S. Department of Energy to a specific number of awards unless otherwise specified by statute or regulations. Renewals of the awards may be negotiated not to exceed 24 months subject to availability of funds.

Evaluation Process and Selection Criteria

Proposals may be subjected to external review following preliminary screening based on the criteria listed below. Projects will be selected for funding based on their quality as determined by DOE staff evaluation of the merit of the proposal using the following general criteria as required by the Department of Energy Financial Assistance Regulations, 10 CFR Part 600, and the specific evaluation criteria outlined in the Guide for the Preparation of Proposals for the Minority Educational Institution Assistance Program—1986.

—The potential contribution which the proposed effort is expected to make to the program's objectives, if pursued at this time.
—Evidence of overall merit.
—Unique capabilities, related experience, facilities, techniques of the university staff, or combinations of these, as integral factors for achieving the scientific, technical, or socioeconomic objectives of the proposal.
—Use of unique, innovative, or meritorious methods, approaches, or ideas
—Qualifications, capabilities, and experience of the proposed principal university investigator and key personnel who are considered to be critical in achieving proposal objectives.

More specific evaluation criteria will be available in the "Guide for the Preparation of Proposals for the Minority Educational Institution Assistance Program—1986."

Proposal Preparation Guidelines

Unsolicited proposals submitted in response to this notice shall contain the information required in the "Guide for the Preparation of Proposals for the Minority Educational Institution Assistance Program—1986," Notice of Program Interest Number DE–PI05–86MI10093. Copies of the guide are expected to be ready for mailing by April 30, 1986. Qualified applicants may obtain a copy of the guide by writing to the U.S. Department of Energy, Oak Ridge Operations, Procurement and Contracts Division, Attention: Marlena Clark, 200 Administration Road, P.O. Box E, Oak Ridge, Tennessee 37831; Telephone Number: (615) 576–7599.

DOE assumes no responsibility for any costs associated with proposal preparation under this announcement.

Closing Date for Submission of Proposals

To be eligible, proposals must be received by the Department of Energy at the Oak Ridge, Tennessee address in the preceding section by 4:30 p.m., June 30, 1986.

FOR FURTHER INFORMATION CONTACT: All technical questions concerning this Notice of Program Interest should be directed to Mr. Rufus Smith, EEO

Manager, Oak Ridge Operations, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37831; Telephone: (615) 576–4988. All other inquiries should be directed to Mr. Charles Crowe, Contracting Officer, Procurement and Contracts Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37831; Telephone: (615) 576–0794.

Dated: April 21, 1986.

Peter D. Dayton,

Director, Procurement and Contracts Division.

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Federal Register

Vol. 51, No. 100

Friday May 23, 1986

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Library	523-4986
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TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

16155-16280.....1
16281-16484.....2
16485-16654.....5
16655-16806.....6
16807-16992.....7
16993-17166.....8
17167-17308.....9
17309-17442.....12
17443-17606.....13
17607-17728.....14
17729-17916.....15
17917-18302.....16
18303-18428.....19
18429-18558.....20
18559-18754.....21
18755-18868.....22
18869-19050.....23

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

315.....16659

Proposed Rules:

Ch. III.....18335

3 CFR

Proclamations:

5470.....16655
5471.....16657
5472.....17309
5473.....17311
5474.....17313
5475.....17607
5476.....17609
5477.....17729
5478.....18296
5479.....18303
5480.....18305
5481.....18433
5482.....18559
5483.....18755
5484.....18757
5485.....18759
5486.....18869
5487.....18871
5488.....18873

Executive Orders:

12171 (Amended by EO 12559).....18761
12557.....18429
12558.....18431
12559.....18761

Administrative Orders:

Memorandums:
May 15, 1986.....18294

5 CFR

532.....18561
550.....16669
890.....18562

Proposed Rules:

831.....16701

7 CFR

2.....17167
25.....17611
25a.....17611
70.....17278, 18875
210.....16807
225.....16807
226.....16807
246.....16155
271.....18744
272.....16281, 18744
273.....16281, 18744
274.....18744
276.....18744
279.....18744
285.....18744
301.....16993
400.....17315
449.....17611
704.....17167
736.....17306
908.....18875
915.....18565
917.....16670
918.....16812
925.....16285
944.....18565
982.....17317
1022.....17922
1240.....17917
1435.....16285
1468.....17611
1472.....17612
1806.....17920
1823.....17922
1940.....17443
1941.....17922
1943.....17922
1944.....17922, 17443
1945.....17922
1955.....17922, 18435
1962.....17922
1965.....17922
2054.....18763
3015.....17169

Proposed Rules:

28.....17193
46.....18590
52.....17349
911.....16347
945.....18796
966.....18890
980.....17354
982.....17354
1097.....17982
1240.....16702
1476.....18552
1493.....16532
1747.....17034

8 CFR

204.....18568
212.....18768
238.....16288, 18769

Proposed Rules:

212.....18591
214.....18591

9 CFR

77.....17001
78.....17922
91.....17318
92.....16485
161.....17318
162.....17318

Proposed Rules:

75.....18455
301.....18456
312.....18456
327.....17196, 18456

381.....18456

10 CFR

503.....18866

Proposed Rules:

19.....17634
20.....16535, 17634
30.....17634
31.....17634
32.....17634
34.....17634
40.....17634
50.....17361, 17634
61.....17634
70.....17634
300.....16854

12 CFR

Ch. VII.....16292
16.....18769
22.....18307
201.....16672
226.....18876
265.....18876
353.....16485
556.....16288, 16501
611.....16291

Proposed Rules:

Ch. V.....16542, 16550
204.....16855
225.....18797
523.....16536
541.....16542
545.....16542, 17634
561.....16542, 16550
563.....16542, 16550, 17634
570.....16542
611.....17035
614.....17035
615.....17035
618.....17035
740.....16710
741.....16710
745.....16710

13 CFR

120.....17002, 18436
122.....18436
123.....17002
309.....16292

Proposed Rules:

121.....16176

14 CFR

11.....18308
25.....18236
39.....16155, 16294, 16506–16508, 16806, 17005–17009, 17322–17324, 17613–17615, 17731, 17923–17926, 18308, 18571–18576, 18770, 18771
71.....16295, 16510, 16610, 16673, 17325–17326, 17461–17463, 17927, 18437, 18578 18772, 18773
73.....17615
75.....16295, 16814, 17463
93.....18309, 18310
95.....16814
97.....17327, 18877
121.....17274
125.....17274
127.....17274
129.....17274
135.....17274

Proposed Rules:

Ch. I.....17743, 18599
21.....17362
23.....17362
39.....16347, 17049–17056, 17362, 17364, 17644–17649, 17743, 17745, 18335, 18600, 18602, 18799
43.....18800
67.....19040
71.....17365, 17986, 18461, 18603, 18604, 18895, 18896
73.....16858, 17647, 18336
91.....18800
303.....17490, 18605

15 CFR

3.....18878
8a.....18879
370.....18773
373.....18773
376.....16674
379.....16296
399.....16618

Proposed Rules:

21.....18605
379.....17986, 18801

16 CFR

13.....16510–16513
305.....16516

Proposed Rules:

13.....16566, 17197, 18897

17 CFR

1.....17464
5.....17464
16.....17464
33.....17464
148.....18879
200.....18881
210.....17328
211.....17331
240.....17732, 18578

18 CFR

271.....16157

19 CFR

12.....17332
101.....16158
115.....16159
178.....16159

Proposed Rules:

113.....18801
175.....17746
211.....16858

20 CFR

404.....16166, 16818, 17173, 17616, 18312
416.....16818, 17332, 17616

Proposed Rules:

404.....18611
416.....17057, 17200, 18611

21 CFR

5.....17010
74.....16674, 18882
81.....16674
82.....16674, 18882
176.....16167, 17011
177.....16827, 18774
182.....16829, 18774
186.....16829, 18774
330.....16258, 18580
331.....16258, 18580
332.....16258, 18580
357.....16258, 18580
441.....16516
510.....18883
522.....18313
556.....18883
558.....16675, 18314, 18883
561.....17174
630.....18580
884.....16652
1308.....17476

Proposed Rules:

630.....16620
805.....16792
1301.....17494
1306.....17494

22 CFR

Proposed Rules:

22.....17650
41.....18774
213.....17068

23 CFR

625.....16830
626.....16830
630.....16830
645.....16830
650.....16830
655.....16830
666.....16830
810.....16830
922.....16830

24 CFR

200.....17927
251.....17175
255.....17175
882.....16296
990.....16835

26 CFR

1.....16297, 16298, 17929, 17936, 18775
7.....17936
53.....16300, 17732
54.....16300
141.....16300
301.....16300
602.....16298, 16300, 17936

Proposed Rules:

1.....16348, 17989, 17990

27 CFR

5.....16167

28 CFR

0.....16841, 16842
16.....16676
21.....16171

Proposed Rules:

16.....16724

29 CFR

12.....18884
102.....17732
1601.....18778
2676.....16677, 17733

Proposed Rules:

1915.....17991
1926.....17203
1952.....18337

30 CFR

251.....17175
252.....17175
914.....17478
915.....17176
935.....16677
938.....18314

Proposed Rules:

75.....17284, 18899
250.....16348
256.....16348
731.....16859
732.....16859
761.....16859
772.....16859
773.....16859
779.....16859
780.....16859
783.....16859
784.....16859
913.....17204
950.....18621

31 CFR

306.....16174
357.....18260, 18884

Proposed Rules:

357.....17205

32 CFR

145.....17178
360.....17481
513.....17961
706.....16174, 16680–16682, 17182–17183
732.....18779
1602.....17618
1605.....17618
1609.....17618
1618.....17618
1621.....17618
1624.....17618
1630.....17618
1633.....17618
1636.....17618
1639.....17618
1642.....17618
1648.....17618
1651.....17618
1653.....17618
1656.....17618
1657.....17618

33 CFR

100.....17012, 17183, 17961
117.....16306, 17012, 18787
118.....16306
153.....17962
162.....17013
165.....17016, 17332, 17968, 18321
402.....16843

Proposed Rules:

Ch. I.....18900
95.....18902
100.....17204, 18344
115.....18345
117.....16568, 17070, 17993
126.....18276
127.....18276
146.....18902
150.....18902
165.....18803
166.....17071
167.....17071
173.....18902
177.....18902

34 CFR

200.....18404

204.....18404
300.....17904
768.....18580
769.....18580
770.....18580
771.....18580
772.....18580

Proposed Rules:
222.....17720
796.....17494

36 CFR

251.....16682
1150.....18788
1153.....17734
1254.....17185
1258.....17185

Proposed Rules:
62.....16349
223.....17994
1228.....17497
1232.....17497
1236.....17497
1239.....17497
1250.....17206
1254.....17207

37 CFR

Proposed Rules:
1.....18290
2.....18290

38 CFR

3.....17628
6.....18789
8.....18789
21.....16314, 16317, 16517, 17188

Proposed Rules:
4.....16350
17.....17651
21.....17995, 17996
26.....17656

39 CFR

3.....18323
4.....18323
10.....17017, 17969
111.....17019, 17629
951.....16517

Proposed Rules:
10.....17073
265.....17997
310.....17366
320.....17366

40 CFR

52.....17334, 18438, 18440
60.....18538
147.....16683
154.....17716
155.....17716
158.....17716
162.....17716
166.....16844
172.....17716
180.....16688, 16844, 18585
260.....16422
264.....16422
265.....16422
270.....16422
271.....17737, 17739
704.....17336, 18323
712.....18323
716.....17336, 18323
721.....16684, 17740
763.....18326
799.....18443
1502.....16846

Proposed Rules:
52.....17208, 17210
65.....16353
180.....16178, 18913
261.....16860
271.....18804
421.....18530
721.....17499
795.....17854, 17872
799.....17747, 17854-17883

41 CFR

51-2.....17188
51-5.....17189
101-17.....17630

Proposed Rules:
51-1.....17212
51-3.....17212
101-20.....18805

42 CFR

400.....16772, 18790
405.....16772
412.....16772
420.....18790
433.....16318
442.....16688, 17340
489.....16772

Proposed Rules:
34.....17214
51e.....16724
53.....18462
60.....18728
400.....16792
405.....16792, 17997
409.....17997
442.....17997
489.....16792

43 CFR

4.....16319, 18326-18328
3400.....18884
3420.....18884
3460.....18884

Proposed Rules:
4.....18345
11.....16636

Public Land Orders:
6615.....18586

44 CFR

64.....17483
65.....17485
67.....17486

Proposed Rules:
67.....17499
205.....17747
222.....17501

45 CFR

101.....18790
205.....18888

46 CFR

307.....18328
310.....17740
552.....17025

Proposed Rules:
4.....18902
5.....18902
35.....18902
78.....18902
97.....18902
109.....18902
167.....18902
185.....18902
196.....18902
197.....18902
326.....17659
401.....18806
510.....17754
530.....18621
572.....16354
580.....17754
582.....17754

47 CFR

Ch. I.....16688, 17631, 18792
1.....17969, 18889
2.....16847
18.....17970
21.....17969
25.....18444
63.....18446
68.....16689
69.....17026
73.....17027, 18448, 18793, 18794
74.....18448
76.....18448
87.....17341
90.....18330, 18794
97.....17029, 17342

Proposed Rules:
1.....16321, 18463
18.....18004
21.....18005, 18007
22.....17366, 18623
31.....16178
43.....18463
67.....17756
73.....16322, 16324, 16726, 18809
90.....17757, 18464
16357-16360, 17367
97.....17074

48 CFR

6.....18810
19.....18810
25.....16802
52.....16802
232.....18587
246.....18587
252.....18587
501.....16690
504.....16690
513.....16175
514.....16690
515.....16690
525.....16692
552.....16692
553.....16175, 16690

Proposed Rules:
6.....16988
8.....16988
15.....16988
41.....16988
52.....16462, 16988

49 CFR

27.....18994
232.....17300
391.....17568
571.....16325, 16517, 16694, 16847, 18795
1002.....18589
1011.....16851
1105.....16851
1144.....18333
1152.....16851

Proposed Rules:
Ch. X.....18346, 18811
27.....19032
192.....16362, 18465
193.....18007
391.....17572
395.....17214
565.....18347
571.....17218, 18009
604.....18466
609.....19032
630.....17144, 17145
1135.....16363, 18009
1312.....16877, 17368

50 CFR

17.....16474, 16526, 17343, 17971-17977, 18451
18.....17980
301.....16466, 16471
604.....16530
611.....17030, 18333, 18795
630.....16530
642.....16530
650.....16520
652.....17346
655.....17189
658.....17487
661.....16520, 18451
672.....17632
675.....18333

Proposed Rules:
13.....18812
17.....16363, 16483, 16569, 18010, 18624-18630
20.....18349
21.....18812
23.....17368, 18634
215.....17896
216.....16365
651.....18913
654.....17075, 18637
683.....17370

LIST OF PUBLIC LAWS

Last List May 22, 1986

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 427 / Pub. L. 99-310

Designating the week beginning on May 11, 1986, as "National Asthma and Allergy Awareness Week." (May 20, 1986; 100 Stat. 463; 1 page) Price: $1.00

H.R. 1207 / Pub. L. 99-311

To award a special gold medal to the family of Harry

Chapin. (May 20, 1986; 100 Stat. 464; 1 page) Price: $1.00

S.J. Res. 247 / Pub. L. 99-312

To designate the week of June 1 through through June 7, 1986, as "National Theatre Week." (May 20, 1986; 100 Stat. 465; 1 page) Price: $1.00

S.J. Res. 251 / Pub. L. 99-313

To designate the week of May 11, 1986, through May 17, 1986, as "National Science Week, 1986." (May 20, 1986; 100 Stat. 466; 2 pages) Price: $1.00

S.J. Res. 323 / Pub. L. 99-314

To designate May 21, 1986, as "National Andrei Sakharov Day." (May 20, 1986; 100 Stat. 468; 2 pages) Price: $1.00